

will take an oath to tell the truth or an affirmation to tell the truth. You will be sworn in by our Asst. Law Director, then our staff will do a presentation on each of the items on the agenda. Then we will give the applicant an opportunity to speak to us and then we will give anyone from the public who wants to address us, the opportunity to speak and then after that we will take a vote on each of the items on the agenda. Mr. Cobb did ask that when you do go up to the podium to speak that you just tell us again that you did take the oath and state your address.

Mr. Cobb asked if we should swear everyone in now opposed to doing it individually, why don't we do that now so I don't forget.

Ms. Rothenberg swore in Mr. Wong, Ms. Hamley O'Donnell and others in the audience who plan to testify.

Ms. Hamley O'Donnell stated she would like to introduce our intern, Alicia, who is attending CSU this summer and she is going to present the first two cases.

Project 16-18: K. Carter, 2609 Princeton, ('A' Single-Fam) requests chicken

Alicia began by stating that this is Project 16-18 which is located at 2609 Princeton Road. It is a single family requesting a chicken coop and run permit. She stated this is off of Fairmount parallel to South Taylor. She stated the property is shown on the overhead. The chicken coop is located next to a 2 car garage. Alicia stated the chicken coop is code confirming and it is 10 feet off of their property line. She showed the front of the house but the coop will be their back yard and this slide shows how big their backyard is. She pointed out that to the left of the garage is where the coop is going to go. In addition to the general standards for a chicken coop, the applicant has to follow the supplemental standards for Conditional Uses so in this case the chicken coop and chicken run section. Alicia stated the staff recommends that the Planning Commission approve the applicants request for a Conditional Use Permit for a chicken coop and run with no more than 4 hens with the following conditions:

1. *Applicants shall adhere to all applicable Building Code regulations;*
2. *This use shall not be injurious to the use and enjoyment of other properties in the immediate vicinity or create a nuisance for adjacent properties;*
3. *The coop and run enclosures shall be of uniform and sturdy design and shall be constructed and maintained in good condition to protect the safety of the chickens and the aesthetics of the neighborhood. Fencing material shall be securely fastened to posts of reasonable strength firmly set into the ground and, if used, chicken wire or other woven wire shall be stretched tightly between support posts;*
4. *At all times, chickens shall be contained within the coop and/or run which shall be at least 10' from all property lines;*
5. *The applicants shall work with staff to resolve any complaints from neighbors; and*
6. *All required construction and installation of the use shall be completed within 18 months of Planning Commission approval.*

Mr. Cobb stated he may have forgotten to say this was for Project 16-18. He asked if there were any questions for staff.

Mr. Cobb asked Ms. Carter if there was anything she wished to add.

She did speak a few words about how she was excited about the concept of having chickens but she did not come up to the lectern so all of it was not heard.

Mr. Cobb asked if anyone would like to make a motion on this project.

Ms. Cohen made the motion that we approve Project 16-18 as stated in the Staff recommendation.

Mr. Cobb asked if there was second.

Mr. Mattox Jr. seconded the motion.

Mr. Cobb said all in favor say aye.

Aye.

Anyone opposed. There were none.

Any abstentions, there were none.

Mr. Cobb congratulated the applicant and joked that she got away with not having to come to the lectern.

Everyone laughed.

Project 16-19: J. Berthiaume & R. Chmelik, 3314 Hyde Park, ('A' single-family) request chicken coop and run.

Mr. Cobb asked that we have the applicant take the oath or affirmation.

Ms. Rothenberg added also if anyone else is here to talk about this case, please stand up and be sworn in as well.

Mr. Wong, Ms. Hamley O'Donnell and others in the audience who planned to testify were sworn in.

Alicia began to present Project 16-19 at 3314 Hyde Park Avenue. She stated his property is located in front of Cain Park and she showed his house on an overhead slide. Alicia pointed out that his property is outlined in red but his chicken coop is going in behind his detached garage which is 10 feet from the property line. Alicia stated that his blue print showed he is 11 feet from the top left and 16 feet from his fence. She also showed the site elevations with an overall height of about 6 feet. Alicia showed the front of the house and that the chicken coop is going to the right of the garage. She pointed out the area where the chickens can roam. She stated that in addition to the general standards for all Conditional Uses an applicant had to follow there are Supplemental Standards and in this case the chicken coop and run section. She stated the staff recommendations are the same as the previous project 16-18 for chicken coops.

Mr. Cobb thanked her and asked if there were any questions. There were none.

Mr. Cobb asked if there was anything the applicant would like to add.

The applicant came to the lectern and stated his name is Rudy Chmelik and he lives at 3314 Hyde Park and that he has been sworn in. He said he really has nothing to say other than, thank you for considering my application.

Mr. Cobb asked if there were any questions for the applicant.

There were none.

Mr. Cobb asked if someone would like to make a motion on this project.

Mr. Horowitz made a motion for approval of Project 16-19 with the 6 conditions.

Mr. Cobb asked if there is a second.

Mr. Howe seconded the motion.

Mr. Cobb asked that all in favor say aye.

Aye.

Anyone opposed or abstaining. There was no one.

Mr. Cobb congratulated the applicant.

Project 16-21: T. Leneghan, d.b.a. Barrio Restaurants, tenant at 2466 Fairmount Blvd. (C2 Local Retail) requests 56-seat outdoor dining on existing rear patio.

Mr. Cobb stated if you are going to be speaking on this, please take the oath or affirmation. He asked if there is anyone from the public that needs to speak on this Barrio restaurant project. There was no one.

Mr. Wong, Ms. Hamley O'Donnell and others in the audience who planned to testify were sworn in.

Ms. Hamley O'Donnell began with saying that many of you are familiar with the former location of the Mad Greek Restaurant. She pointed out the area which is shown in the red color is the existing outdoor dining area which was approved in 2007. Prior to that, just to the northeast in 2005 the Planning Commission approved outdoor dining at the Fairmount Martini and Wine bar. So in 2007 this was approved, she points to the parking lot to the south. She stated in the existing building there are offices and retail spaces. At the very bottom of your screen are some townhouses along Fairmount Boulevard. She showed the existing layout that was approved and the applicant proposes no changes to the layout that was proposed. Ms. Hamley O'Donnell showed the site ad as you can see, it is also screened down below grade and the parking lot is screened with existing landscaping which is part of that approval. In front of you are the Standards for Conditional Uses. The staff report dated July 27th, we laid out how the application conforms with the existing conditions for the Standards for Conditional Uses for the outdoor dining, as well as the regulations in Section 1153.05P which deal with outdoor dining regulations. She stated they do conform with

those and also with our Sustainability Guidelines, we feel that they conform with those because we like to use and reuse things that we have constructed and outdoor dining is a very good way to support our local businesses. Ms. Hamley O'Donnell did state that she did receive one e-mail from one neighbor who was concerned about the sound and some of the conditions we have put in with other cases, as well as this one, give us the ability to have the applicant have the hours that they think will work and this is not like it is someone's backyard but it also gives us the ability to back off these hours if it becomes a problem, or if the sound becomes a problem. She stated she had talked to the owner about the idea that no live music will be permitted out of doors, One of the reasons, for some of you that are newer, is that it is real easy for us to say to come one to turn down the volume on your radio or television. It is another thing if you have a band and they do not want to lower the sound. She stated Mr. Leneghan stated that he did not have any intention of having any outdoor live music at that venue. She stated that staff recommends approval of the 56 seat dining area as shown on the drawings with the following conditions:

- 1. This use shall not be injurious to the use and enjoyment of other properties in the immediate vicinity or create a nuisance for adjacent properties;*
- 2. Hours of operation shall be 11 a.m. until 2 a.m.;*
- 3. The applicant shall work with staff to resolve complaints from neighbors and residents, which, if necessary, could result in reduced outdoor dining hours;*
- 4. Buffer trees and landscaping shall be maintained;*
- 5. Live music shall not be permitted outdoors; television and radio broadcasts and recorded music shall not cause a nuisance to neighbors;*
- 6. Outdoor lighting shall not directly glare onto neighboring properties;*
- 7. Any proposed expansion of the use or installation of an outdoor bar shall require the approval of the Planning Commission;*
- 8. All required construction and installation of the use shall be completed within 18 months of Planning Commission approval.*

Ms. Hamley O'Donnell added that when she received the e-mail from the neighbor, she did send him a copy of the staff report and since they are not here tonight, she is hoping that by seeing the conditions might have made them feel a little better about it. She added that she believes the applicant wants to be a good neighbor about it. She stated that was all she has.

Mr. Cobb asked if anyone had any questions.

Mr. Horowitz asked if there were any issues with the previous identical use.

Ms. Hamley O'Donnell answered that no one in her department remembers any calls about the Mad Creek. She stated that a few years ago they had a few calls about the Fairmount Martini Bar but they have not recently so she assumes that was resolved.

Ms. Rothenberg stated that for No 4, buffer trees and landscaping shall be maintained, she asked if that is the existing buffer. She said so it is those that are illustrated in the site plan and as they exist now.

Ms. Hamley O'Donnell asked if she wanted to include "as shown in the site plan"?

Ms. Rothenberg said yes. She asked do we want to be able to change it or do we want say as approved by the Planning Director.

Mr. Cobb stated we can leave it up to how Mr. Wong would prefer it?

Mr. Wong responded that it was fine with him if you want to give them some latitude, he felt it was appropriate.

The applicant came to the lectern.

He stated his name is Jake Hawley, the area Director for Barrio Restaurants and acknowledged that he is under oath. The other gentleman came to the lectern and stated his name is Sean Fairbairn and that he is one of the owners and that it is under oath.

Ms. Rothenberg asked for the business address for Barrio.

He answered that their address is 15527 Madison in Lakewood, OH.

The other owner came to the lectern and stated his name is Sean Fairbarian of Lakewood. He stated one thing that he wanted to clarify is that they are not a bar or restaurant and they do not have live music. He stated another thing about the landscaping, he said they are all about hiding the patio and making it look nice. He said they run three restaurants, the other is in Lakewood, they have one in Tremont and one in Gateway and at Progressive Field. This will be our next location. They all have patios and they have had no complaints. He said they are all in residential neighborhoods as well, so we are use to people living close by and we are very cognizant of when to turn the music down. We never keep it at a very high level anyways.

Mr. Cobb asked if anyone had any questions for them.

Mr. Cobb asked for a motion on Project 16-21.

Mr. Rink made the motion to approve Project 16-21 with the conditions noted and he would like to give them the flexibility on landscaping per the approval of the Planning Director. He added that we want to welcome you to Cleveland Heights and we are thrilled to have you here in the city.

Jessica Cohen seconded the motion.

Ms. Cohen added that we are excited to have the space filled so quickly.

Mr. Cobb said all in favor say aye.

Aye

Anyone opposed, There were none.

Any abstentions, there were none.

Mr. Cobb stated it passes so congratulations.

All wished them good luck.

Project 16-04: Taub Automotive Corp., dba MasterWorks Automotive, 1789 S. Taylor (PPN 683-20-054) and vacant parcel to north (PPN 683-20-053)(C2 Local Retail) requests to:

1. Join lots;
2. Renovate & expand (to north & east) exist. 2-bay auto repair to 8-bay auto repair; &
3. Modify parking requirements to provide 26 parking spaces (32 spaces required).

Mr. Cobb asked if there was anyone here on behalf of the applicant for this project. Ms. Rothenberg asked if there was anyone else here that wished to speak on this matter tonight.

Mr. Wong, Ms. Hamley O'Donnell and others in the audience who plan to testify were worn in.

Ms. Hamley O'Donnell stated that this is a project that we have a couple different things that they will be asking for and we will want this in two motions or Liz may want it in 3, she was not sure. She stated that you can see in the history of this case, Masterworks took over this site in 2009. She showed a slide on the overhead as to how it looks now. She stated the lot in the green outline was previously a house that has gone through the Land Bank who took it over and demolished it and Mr. Taub purchased it from the Land Bank with the idea he would expand it on that site. It was a 2 family house that was crunched in there and was foreclosed upon and in poor condition. His idea was that he would expand his business which has been very successful. She showed a slide which is similar to this project. This is a similar case for those of you who were here when Simon's Automotive came on board where they built a whole new building but did it in phases so they could continue to operate their business while they were expanding. In this case, the existing building is about where the pink and blue area is (she points to it on the overhead). She stated their intent is to build the areas of the 8 bays in the orange color and then tear down the existing building then build a new building in that place. As you can see, they are expanding the parking lot and at the top of the slide, that area has been reduced to a smaller amount of grass and a drive way that will have access through here. It is all going to go back to that area up here which was a large area of grass and will be expanded towards the residential property. She stated she knows that Mr. Taub has had conversations with the adjacent neighbors. She then showed the proposed expansion of parking. What she showed on the overhead was submitted by the applicant, here the old house was showing that area of the site, the context, across the street on Taylor. When they had the building torn down typically what they do is they reseed the area but because Mr. Taub's intention was to move forward with this as a potential parking lot, he took a risk that he hoped that he hoped he would get approved here of not going through the effort of reseeding the whole thing just to move forward with the parking lot. She stated they told him he was not allowed to park on it and he has put cones up and been adamant about making sure that no one has parked on that. She showed the proposed appearance of the new building and it has already gone through the Architectural Board of Review for a preliminary approval and they like the direction it was going. As they finalize the design they will go back before the ABR again for approval on the esthetics. The rear faces the neighbors and has some glass doors, and the same with the various facades to make it feel more open, similar again, to how Simon's did that. One of

the things that we talked about and they are coming through the Planning Commission so they know they are going in the right direction. Some variances are going to be required. She said one of them is that our code requires 60% windows through a façade facing a street and there is not 60% windows they also have the case of having to have equipment on walls and things like that. She stated there will be conversations with them as this process moves forward. Ms. Hamley O'Donnell stated that she will say that we have certain business owners that stand out in this community for treating their business well and maintaining their business and being good neighbors. Mr. Taub is one of those people. If we ask him to do something or if there a question, he reacts immediately and has been a really good neighbor in the community as well as a successful business owner here. His proposal to expand from his small 2- bay business into an 8 bay business is a substantial business and the sign of this success. She said that we do have the Standards of Conditional Uses and those are laid out in your staff report. She stated that staff has found that the request meets those standards as far as the standards of (A), we found that the landscaping and the appearance is in keeping with the neighborhood and no additional curb cuts are proposed though the existing Bendemeer curb cut should be removed and replaced with grass and or trees. Ms. Hamley O'Donnell stated that should be a condition of the approval in case (B) again screening it and limiting the hours of operation to their existing hours of 8 AM – 6 PM and this should not present a problem for the neighbors. (C) the esthetics have gone through the preliminary Architectural Board of review . The initial approval they gave us and now we have given them some feedback on that. They then went back to the drawing board and addressed some of our concerns and the ABR is generally happy with the direction they are going in. On (D) she stated this will not negatively impact neighbors. Mr. Taub has assured the Commission that any noise from the business will be contained and that open overhead doors facing the residential neighborhood will not cause a negative impact on the neighbors by way of sound, odors, or other negative effects. She stated that we have not had complaints about his existing business. She stated that Code Section 1153-05 requires a 6 foot tall masonry wall separating the applicants property from the adjacent residential use. The applicant is currently reviewing options for materials and landscaping along that buffer zone. A variance would be required for anything other than masonry with a landscape buffer and approval of a landscape plan as usual should be a condition of approval. We do go through the Supplemental Standards for Conditional Uses and she said she was not going to go into those in detail but it talks about parking requirements and mixed use design standards, conditionally permitted use and signage requirements and most of those will be covered with the Architectural Board of Review and possibly with the Board of Zoning Appeals. Regarding the parking requirements, he has a very quick turn over with his cars and doesn't believe he needs an excessive number of parking spaces (in his opinion) that is required by our code and he believes that based on his function and his turn around time and the amount of cars he services, he needs fewer spaces and is requesting a reduction in parking per Code Section 1161-105. She stated they have observed the parking lot as not always overflowing with cars as we do find in some of our car repair places. She stated they asked the applicant to assure the Commission that parking spaces that are provided will be sufficient for his business operation. She stated that the applicant has assured them that they will also meet the bike parking requirements. Ms. Hamley O'Donnell said if they wanted to wait to tell us and we could put in to be approved by the Planning Director. She said it is so few a number of spaces, they could put a bike rack in front. They also could do something inside the building or on the right away with allowing some distance and that would be acceptable as well. As far as the Sustainability Guidelines, we list all of those and the applicant has noted that they will build in a sustainable way. She stated their architect is here this evening and he can address how they meet some of those Sustainability standards or their intent to meet those standards in this design. She stated we will need to understand

the exterior lighting and again this is one of those things that usually comes later in the process and is approved by the Planning Director along with landscaping requirements as well. She stated that first staff recommends that the Planning Commission approve the joining of parcels #683-20-054 and #683-20-053. As a second recommendation, staff recommends that the Planning Commission approve an alteration to the Conditional Use Permit to allow Baruke(sp) Taub dba Masterworks Automotive to:

1. *A landscape and screening plan, landscape buffer zone plan, parking lot paving/stripping plan, storm water management plan, and lighting plan shall be submitted for Planning Director approval prior to application for Building Permit. Input from the adjacent residential neighbor shall be taken into account in the landscape, screening and buffer zone design;*
2. *A plan for removing the vacated Bendemeer curb cut, installing a curb and adding trees and/or grass shall be approved by the Planning Director;*
3. *Receipt of variances, if required;*
4. *Approval of the Architectural Board of Review;*
5. *All activities shall take place inside the building;*
6. *No merchandise shall be stored or displayed outdoors and no vehicles shall be for sale;*
7. *No junk, inoperative or unlicensed vehicle will be permitted to remain outside on the property for more than 48 hours;*
8. *All outdoor wiring, including electrical and telephone wiring, shall be installed underground;*
9. *The use will not be injurious to the use and enjoyment of other property in the immediate vicinity;*
10. *The applicant shall work with staff to resolve any complaints from neighbors and residents; and*
11. *All required construction and installation of the use shall be completed by September 1, 2018. If building and parking lot are completed prior to September 1, 2018, all landscaping shall be installed within 3 months of building completion.*

Ms. Hamley O'Donnell stated that the goal behind the completion dates is to get the landscaping in as soon as possible after the construction. She stated that is all she has.

Mr. Cobb thanked her and asked if there were any questions for staff.

Mr. Horowitz asked doesn't modifying the parking requirements normally go to the BZA department.

Ms. Hamley O'Donnell answered, "when you get a variance that sticks with the land and so if you get a variance, it lays with the land, that might not be enough for some. Like someone who does major bodywork, might have cars in for a long period of time. Their reduction in parking might not be appropriate. She stated we might have problems with them parking around the area. She stated because of the nature of his business and his quick turnaround time, he feels that is appropriate. We do have business's in the city that with cars and they do that pretty quickly and there are others that don't. We did not want that to be tied to the land, we wanted it tied more to the Conditional Use as in other cases.

She stated the time frame we gave was based on what the applicant told us as far as what was realistic for them to do. They missed this construction season at this point.

Alex Pesta came to the lectern and stated that he practices with City Architecture and is located at 3636 Euclid Avenue and he is also a Cleveland Heights resident and he has been sworn in.

Mr. Cobb added that Mr. Pesta use to be a member of this Board.

The gentleman added that he grew up in Cleveland Heights at 3682 Shannon Road for most of his life. He moved away for a theological seminary for a while and live in Willoughby Hills. He said they purchased Masterworks Automotive in 2009 and he believes he has really turned it around and made it something. He stated he has done what he can esthetic wise with what he has. He said 2 years ago he purchased the home on Severn Road which is about a block from the current shop. He stated he sees this project not only as a business endeavor but as a neighborhood endeavor. He had to decide where the location should be as much as he wanted the business to grow. He said went back and forth on if he should purchase another property, stay in Cleveland Heights or to go elsewhere. He really felt that if he was going to make the investment, he would move back into Cleveland Heights, his kids live in Cleveland Heights and go to school here. He stated it is more of a community thing. He wanted to create some curb appeal and put some back on So. Taylor. He stated that was his goal and the appeal that he wants to have. He stated he has been very firm in explaining to the residents on Bendemeer that they are going to be good neighbors and he was going to allow them access to help with what is going to border on their property. What will they be seeing every day when they walk out the front door. e stated he was standing with Thesall Fritz who is a neighbor that is behind them. He told him that he wanted him to know when we are standing at your front door, you will be seeing the back of my building if we don't work together. He said he would like to screen it, he said he would not want to see the back of this building from his front door. He said it will be nice but something I want to see every day when I get the paper. He worked with him and stated that he was open to the idea that he would have some direction and the other neighbor will see. He said he had the requirements for an masonry wall which would be the easiest, more expensive but it would not provide what he thinks is very neighborly. They had also talked and worked with them about landscape screening, some taller, quicker growing trees, things that would screen it visually and also acoustically. Something they will not have to hear or see every day. He stated he feels like he has a very good relationship with them.

Mr. Cobb added that the plans look fabulous.

He thanked him. He said that Alex put it together. He said Alex was very good at listening and putting that into a real architectural drawing. He was glad that someone could really understand him.

Ms. Cohen stated that she is a resident of the Milliken neighborhood and the amount of investment that Mr. Taub is intending to put in to our neighborhood, she just wanted to thank him for the energy, effort and consideration about building up Cleveland Heights and putting your family and business in our city.

Mr. Cobb asked if there were any other comments or questions.

Ms. Hamley O'Donnell pointed out that Mr. Wong caught an error in what she had said earlier. There is no required bicycle parking so we will disregard that. There was nothing in the conditions but I just wanted to point that out.

Mr. Cobb thanked her.

Ms. Rothenberg swore in the next people to speak.

They did not know this was about the automotive case so they sat down.

A gentleman came to the lectern and stated that he wanted to say something about MasterWorks. He said that they have been in the community 3 years and for those 3 years he has been fixing my cars. He said he has been getting cars towed from Maple Hts., Solon, to this facility, before he even opens up for the day. He then calls when they open and tells them about his car and he gets right to it. He has stayed open late for him just to make sure he has a car. He said he has also sent mugs, keychains etc. to the gym in appreciation. He has been there and seen how busy his business is. His quick turnaround says a lot about his work and how he values the community and the work. He is honored that he is witnessing something like this.

Mr. Cobb thanked Mr. Wheeton and appreciated the comments.

Mr. Cobb asked Ms. Rothenberg about how many motions she wanted.

Ms. Rothenberg replied, there will be just two, the lot joining will be first, on the other two, you would only want the parking reduction if there was an expansion so those should stay together.

Mr. Cobb asked for a motion on Project 16-04 lot joining.

Mr. Horowitz made the motion for the two lots named to be joined.

Mr. Cobb seconded the motion.

All in favor say aye.

Aye.

Anyone opposed. No one.

Any abstentions: There were none.

Mr. Cobb stated that passes.

Mr. Cobb asked for a motion for the second part.

Mr. Horowitz made the motion to approve Project 16-04 for the renovation and expansion from a 2 bay to 8 bay auto repair and for the renovation and expansion from a 2 bay to an 8 bay auto repair and reducing the parking requirement from 32 to 26 spaces with the 11 staff recommendations including the modified Number 11.

Mr. Cobb asked if there is a second.

Ms. Cohen seconded the motion.

Mr. Cobb said all in favor say aye.

Aye.

Anyone opposed. There were none.

Any abstentions, there were none.

Mr. Cobb stated it passes. He added we look forward to seeing the project when it is completed.

Project 16-20: Naturally Gifted Fitness Center, 1633-35 Lee (C3 Gen Comm) requests expansion of existing lower level fitness center/health club to include 2,844 s.f. downstairs and 3,696 s.f. upstairs.

Mr. Cobb stated if you are here to speak on the Fitness Center, please would everyone stand so you can be sworn in or take an affirmation.

Mr. Wong, Ms. Hamley O'Donnell and others in the audience who plan to testify were sworn in.

Mr. Cobb stated as a reminder, staff will make a presentation, then we will hear from the applicant and then anyone else who wants to speak on the project will be given an opportunity to do so. If you have questions, please do not direct them at anyone speaking or the applicant, please direct them up here and then we will forward them on to the applicant. That is the legal process that we have to go through.

Ms. Hamley O'Donnell stated she will give her report and then she has asked our Building Commissioner and Police Chief to also give us a short report to give a bit more information to you all.

Ms. Hamley O'Donnell stated that this building is located in the Masonic building which is an existing mixed use building at Mayfield and Lee Road. The building has retail, meeting spaces, apartments and some garage spaces. She showed an aerial view of the parking which is mostly reserved for the tenants. It is such a large building it is best to get a sense of it from the air. She pointed out some parking in the back which she felt was mostly reserved for the tenants. She pointed out the large central space which is what we are looking at this evening. She pointed out the New Spirit revival center and they have parking lots also. She pointed out the Heights Rockefeller building and their parking lot. She also pointed out a privately owned building that was mentioned in your staff report. The owner is Mr. Giarrizo who owns this property as well as a few others she has pointed out on the overhead. They have private owned parking lots that serve these business here. She stated since there is very little parking for this 100 year old building, clients use on Street parking along Lee Road and often times clients for this building park along Whitethorn road and other side streets and then also from complaints from commercial

owners and tenants, they use this parking which is not intended for their use but is convenient for them. She stated the history for this is that in 2013 Philip Weeden dba is Naturally Gifted Center was granted a Conditional Use Permit to operate a fitness center, offering fitness classes, weight training and massage in the lower level or basement of the building which is shown. At that time the description he told staff that the classes would be for up to 25 people and that no more than 2 instructors at one time would be teaching the class. The hours of operation were to be from 8 AM to 8 PM. This was to take place in the basement which had previously been used for a ballet studio. It was then determined that no additional parking would be required since it was changing from a fitness use to a fitness use. Subsequently, unbeknown to the City and not long after they opened, the business expanded into rooms in the basement and the first floor. Ultimately into the former party center space on the first floor which is located where she is pointing on the overheard. The applicant informed staff that they had expanded to 2,844 sq. ft. in the basement and 3,696 sq. ft. on the first floor. On August 1st the landlord called me to update me on the square footage and the space he had leased to Naturally Gifted which he clarified was 4,000 square feet on the lower level and 9,217 square feet on the upper level. She stated the online videos show the fitness center's use of the former party center space for boot camp classes with more than 100 people and they also operate a cardio weight and cycle room on the 2nd floor. In 1999, a Touch of Elegance Party Center was granted a variance to conduct a party center and catering service in that large banquet area. They were required with that variance to provide 100% of the required parking spaces on a separate parcel. The condition was that a lease for the parking facility which at that time was over diagonally across the street, for all required parking spaces would be maintained and a professional valet service had to be utilized for that space as well. This was to make sure the people parked in this and not in residential properties or on the lot across the street which is privately held. She stated that over the past year, city staff have received numerous complaints from the residential neighbors on Whitethorn about the noise from the music and microphones used for the large fitness classes. Police and planning staff have been involved in conversations with both the neighbors and the applicants. After the noise complaints, the Weeden's eliminated 2 speakers, reduced the speaker volume and stopped opening the windows which are along the side. (She pointed to them on the overhead slide). Even with reducing the speaker volume, we still have neighbor complaints about the sound. She stated she was called to a neighbor's property months ago and stood in the back yard and could hear the bass beat and the voice from the microphone that the instructor was using.

Ms. Rothenberg asked Ms. O'Donnell if that was before or after they reduced it, when you were there.

Ms. Hamley O'Donnell answered it was before they reduced it, but we still have received complaints since they reduced it.

Ms. Rothenberg asked Ms. Hamley O'Donnell " but you have not stood there and listened since they reduced it"

Ms. Hamley O'Donnell replied "no, she has not stood there since they reduced the noise."

She continued stating that for almost as long, commercial tenants and the landlord across Lee road complain that Naturally Gifted patrons regularly use their parking lot at the expense of clients of their own personal businesses. The Wheeton's have regularly informed their patrons that they should park in and on street parking spaces or in the \$1.00 lot at the

Rockefeller building. The Weeden's have continuously and even in the agreement with their clients have told them they should not park there. She stated that without staff on the street telling people not to park there, people are finding the shortest distance to park which is across the street and ignoring that request. The Weeden's have informed staff that the Civic has agreed to allow them to park there and just tonight they gave me a letter from New Spirit Revival's Centers/Civic which says; To whom it may concern: As pastor and Board of Director's and President of New Spirit Revival Ministries, I grant the business Naturally Gifted Fitness Center access to our parking lots for use during their fitness classes and events.

Ms. Hamley O'Donnell stated this is a start. It does not meet the standards of a formal lease and we have not had the opportunity to understand exactly where those parking spaces are, the number of parking spaces and whether they are within 300 feet of the existing space. She stated the smaller lot may be, staff has not had a chance to evaluate it. At this time we do not have a full understanding of whether they can be complaint and we would require an official lease approve by the law department. No building occupancy permit or planning commission approval has been granted for the expansion of the use beyond the original valet studio space in the basement for 25 people. The applicant requests to occupy the expanded fitness center spaces that they have already expanded to for group fitness classes and personal training, weight training and massage. The classes are now held from 6 AM till 8 PM most days, as opposed to the 8 AM to the 8 PM that initially had been proposed. It is unclear from the description that we have received from them how many classes are conducted at one time. The maximum number of staff and maximum number of people who would be attending the classes at once and how the classes might be staggered, this all needs to be clarified. She said it is stated that there is a cardio room, a weight room, a boot camp room along with a locker and cycle room being used. These uses are un-conditionally permitted in the C-3 district, health clubs and fitness centers. She showed a picture of the outside of the space. She showed a sign that was installed without Architectural Board of Review approval. She showed the small parking lots that are tucked behind in there.

She stated as far as the Standards for a Conditional Use, letter (A) a fitness center is in keeping with the intent of the zoning code as long as it does not disrupt adjacent property owners and sufficient parking is provided. The applicants do not have an official lease for adequate parking for their use and neighbor complaints continue. She stated that our code requires 67 parking spaces for a 13,217 square foot exercise space.

(B) Talks about disruption of the neighbors and the sound of the exercise class has been a disruption to the residential neighborhood and the neighbors as well as the businesses as far as taking up some of their parking for their tenants.

(C) The expanded fitness center has caused problems for the neighbors, both residential and commercial who believe the character of the neighborhood has been negatively affected by the sounds and the parking and private parking lots. Previous tenants of this space have been required to provide off-site parking for tenants within 300 feet of the site. We have talked about the lack of parking and this applies under this (C) She stated that without them having any staff for anyone to monitor where their clients are parking, clients just go to the shortest and quickest place they can go. In some cases, for example, Noble School, where we were having parking problems, we required and asked the applicants to put staff out there who would direct or prevent their staff from parking there. It is complicated and difficult.

(D) With this condition, as you know, there are quite a few people here and we expect neighbors tonight to testify how the use is disrupting their enjoyment of their property. The

drastic expansion and clients without city permission, pervision of parking and adequate noise control has negatively impacted the neighbors. We have requested and really need to have full understanding of about the square footage of each room, what it is used for, maximum number of people who would be in the space at once. A parking plan and a parking lease and an adequate plan for sound control inside the building.

(E) We do not anticipate that this building would impede property development, it have been there for a100 years.

(F) This is not really applicable.

(G) The large number people coming and going from the classes could provide traffic congestion, primarily the complaints were not about parking on the streets, but about parking privately held lots without permission.

Ms. Hamley O'Donnell stated the rest of the conditions do not really apply to this proposal. She stated that after we advertised we received information from the landlord about the additional square footage of space which is substantially larger than what we advertised and we have asked for the rental agreement. We do have the letter which she would like to have entered into the public record but that is not necessarily a lease, there are more specifics that we would need. She again is noting that the police chief and the building commissioner are here this evening to give updates as well. She stated that at this point staff recommends that the Planning Commission deny the Naturally Gifted Fitness Center request to expand their business beyond the originally approved basement level ballet studio space for 25 student classes and immediately suspend classes in the other rooms. At such time that Naturally Gifted Fitness Center has secured nearby off street parking and created a parking plan and provided adequate sound control measures they may reapply for an expansion of their use. Ms. Hamley O'Donnell stated that was all she had and if she would like to hear from the Police Chief and Building Commissioner first.

Mr. Cobb stated that before he forgets, what you would like to have entered in the record is this August 10, 2016 e-mail. Ms. Hamley O'Donnell said yes, there is a letter in front of the commission and she apologized, it was an attachment to an e-mail so her name is not on it. The letter says to the City of Cleveland Heights Planning Commission dated Wednesday, August 10th from Heather Rice who is a Whitethorn resident. She could not be here this evening but asked that be entered into the public record and then also the letter from New Spirit Revival's Center that talks about giving Naturally gifted access to their parking lots..

Mr. Cobb asked for a point of clarification on the Conditional Use Permit that we previously granted is 13-11, are you asking us to take some action tonight on that Project.

The answer was no.

Mr. Cobb said you are just asking us to deny their expansion. He asked if they were put on notice that this Project 13-11

Ms. Rothenberg stated if the Planning Commission wishes to do.

Ms. Hamley O'Donnell stated that she had talked with the applicant about the fact that their ability to operate their business, if they can't stay within the requirements and conditions of that is in jeopardy. We did not discuss that specifically, about that happening this evening.

Mr. Cobb stated that he felt it might be prudent to limit our discussions this evening to the project in front of us and then if we need to revisit the prior Conditional Use we could do that at another meeting.

Ms. Rothenberg replied "that makes a lot of sense".

Mr. Cobb asked if there were any questions for staff before we hear from the Police Chief and the Building Commissioner.

Ms. Cohen asked about the parking lot that is being used illegally, what are the business's and what type of signage exists in the lot already prohibiting or permitting parking.

Ms. Hamley O'Donnell pointed out a Chiropractor business, a beauty salon and a restaurant/bar in here. She pointed out an auto repair facility who recently has done a lot of renovation work on. These are separate lots but in common ownership so she thinks they have a shared parking arrangement on those properties. There is a large sign that says that they reserve the right to ticket and tow. She stated that at some point the owner at that site is here this evening and probably can testify to that more. She stated she has seen at times during the weekends, they do put out a larger sign that says, "Don't Park Here" but there is definitely signage that gives them that right. The problem is that is on them then, and they have a system in place where if you are going to the beauty salon, you put a paper on your dashboard so they can monitor who is parking there. She stated they have tried to create a system but they still have to go out and check to see if they are parking illegally there.

Mr. Cobb asked if there were any other questions.

The Police Chief came to the lectern and stated her name is Annette Mecklenburg and that she is the Chief of Police for the City of Cleveland Heights and yes, she has been sworn in. She stated she is going to give us a bit of background. She stated that when she was informed of this hearing, she went back to check our records to give you an accurate idea on how many times we have actually responded to the various complaints that at issue here. The Chief stated she first became aware of these complaints last year when she was a Captain so she has had some contact with residents and the business owners in that area personally regarding the complaints. She stated the 3 main complaints that we received are 1. the noise – from at least one of the residents on Whitethorn. She stated she started with January 1, of 2015 through July of this year 2016. She stated they have responded to 12 noise complaints at Naturally Gifted Fitness. Mainly it was for the music and or the use of the microphone. She stated that of those complaints, she will admit by the time they arrived 7 of them, it was quiet or the noise was reasonable according to the officer. She stated that 3 of the times, they were advised of the noise ordinances and on one occasion they were cited. They received a violation for the noise ordinance. The second complaint that comes into play is the parking. As Kara pointed out, it is a rather small lot across the street and it is parking for the businesses on the West side of Lee Road. Over the last year and a half we actually had at least 51 parking complaints there that the police have had to respond to and a minimum 1 or 2 citations were issued, sometimes we are out there issuing 10-14 citations. So, you see they are in a rather small lot. If you have 10-14 cars parking there that do not belong there, they are taking up quite a bit of the lot. In addition to that lot, the other issue is Whitethorn. She stated that on Lee Road and at the corner of Whitethorn at Lee both are prohibited zones and we do get complaints there of parking violations if cars do park there. It makes it difficult to turn off of Lee Road. She said they

have had a few complaints there. Chief stated that they have a business liaison officer who she did send out to speak to the Wheeton brothers regarding these complaints. She stated according to her logs, on Feb. 17th they were advised regarding the repeated noise violations and they have seemed to have slowed down. She stated they have not have had as many noise violations. She stated according to her records, the last noise violation was June 9th and there has not been reported in the last two months. Then she said on April 15th the officer again went out and spoke to them about the parking and their customers parking across the street on the private lot. It was agreed then that a sign would be posted on the doors where you enter to go to Naturally Gifted Fitness advising, people to not park across the street. However, since April 15 of last year, we still have received 22 complaints. So 22 more times we had to respond to issue parking tickets for violators and finally the last complaint that we have received and this is more a recent one. It was reported about garbage in the area. Some of the residents on Whitethorn complained about water bottles and other trash that is thrown on the tree lawns in that area from the patrons who are going to Naturally Gifted Fitness when they are leaving. Chief stated that was all she has.

Mr. Gainer stated he had a question. He asked the Chief about the noise complaints, were they all from Whitethorn residents or from other businesses and apartments there?

The Chief answered that the noise complaints were all from Whitethorn according to her records.

Mr. Mattox asked about the other businesses in that building and has anyone spoken to them about their customers or anything, parking across the street as well. He was curious if it was just a problem for the building or is it just specifically for the Fitness Center.

The Chief answered that they had not spoken to any other businesses other than Naturally Gifted Fitness that she is aware of. She stated that the complaints that call in say that they are patrons of Naturally Gifted Fitness. She stated that on Lee Road the maximum might have 15 metered parking spaces depending on how many people are attending these fitness sessions but she answered they did not talk to anyone else.

Ms. Hamley O'Donnell added that one of the patrons across the street did note that there is beauty salon in the Masonic building and that they have had issues with their patrons also parking there. She thinks the issue with Naturally Gifted is that most of the other businesses are pretty small and have a handful of people coming to them. If you have an exercise class with 100 people in it and it's not a trickle in an out like a beauty salon would be. If there is a class at 6:00 PM and you have 100 people coming to a class that is why it is more obvious to the patrons there vs. 1 person getting their hair cut.

Mr. Cobb asked if there were any other questions for the Chief.

Mr. Cobb asked the Building Commissioner to come to the lectern.

He stated his name is Fred White and that he is the new building official for the Cleveland Heights building department and he has been sworn in. He stated that he was asked to speak this evening on just the Ohio Building Code requirements when a tenant wants to move into a new tenant space. The code does require them to obtain a Certificate of Occupancy. He stated there are usually two scenarios, we look at previous tenant and if it is for the same use and as the new tenant that wants to move in, we would just require a safety inspection and they would be given a Certificate of Occupancy once if there were any

violations that needed to be corrected. Mr. White stated the second scenario would be, if the tenant space that they wanted to move into was a different use group. Mr. White stated that when that happens, the applicant would need to file an application with the building department, submit detailed architectural or engineer drawings and they would have to comply with the building code requirements for the new tenant space. He stated at this time, he believe they have a Certificate of Occupancy for the basement but nothing was pulled for the second floor.

Mr. Cobb asked him if he knew off hand what the occupancy limit is for the basement.

Mr. White answered he did not, it would be the Planning and Zoning area and he did not know what they granted him.

Ms. Hamley O'Donnell stated at the time they came before you it was stated it was going to be a 25 person maximum class. She stated she did not know, the Building Department may have said that the space could get more people in, she said they based it on what the applicant was saying.

Ms. Rothenberg added that Building Department usually goes by square footage.

Mr. White stated based on assembly area and the number of people per square feet.

Mr. Cobb asked "anything further".

Mr. White answered, "no, that's it".

Mr. Cobb stated it was time to here from the applicants.

Ms. Hamley O'Donnell added that the Weeden's landlord is here as well.

Philip Weeden came to the lectern. He stated his name is Philip Weeden. He stated that he wanted to give them some history about how this became. He stated that he was in Iraq and from 2009-2012 his brother was doing personal training at Cater To You Fitness on Rockside Road. He stated what happened was, the owner of that facility did some shady business and he was forced out because the doors were closed, he competed in body building and started his own personal body training which became successful. He said he got an e-mail in Iraq stating that his brother was thinking about opening up a gym, what do you think.

He said his reply was "are you sure? The response was "yes, it's time, I have nothing else". Philip said he replied, give him some time and when he comes off of the contract, we can get started". He said as soon as he got home, his brother has already had a facility in mind and showed me the facility in Cleveland Heights. Mr. Weeden stated he walked in and said "cool", He stated his brother is a visionary so he had name ready etc. He said when they started painting and getting things ordered, it rose to a level of small minded individuals. He stated they did not want to get in over their head with these big ideas and not even have the business to drive it. Our friends and family came to help them and it took about 2-3 months just to renovate the property to make it gym appropriate. He said during that time, he was running into issues and a few times he even saw him cry a few times because he is not sure he should go about doing this. He said he was a support for him and he wants to see him go forth in his dreams. So, when they started, they did pre-sign up so then they would know how many people are able or want to use this gym. Mr. Weeden said

that when they came to the Planning Commission, it was for 25-30 people because then they did not have that many people signing up. He said once we opened the doors, everybody came. He said when they held the first class, it was well over 25 people in the class. He said "what do you do, we did not know the proper procedure or the correct route to go because we come from Cleveland. In Cleveland, they don't have all of this, yes you can or no you can't. When we came to Cleveland Heights, everything was regulated so we continued to do the classes till eventually we were forced to go upstairs. He stated they did contact the landlord and asked him we could use the large ballroom area which was not being used, can we rent it. We had a few conversations with him, renting the upstairs cost \$26,000 just to renovate it to get it right, we have a boxing room, we have a sauna, we have a juice bar with offices where people can sign up in. We have policemen that come in to use it, we give the City of Cleveland Heights a discount. He said the members pay \$40.00 a month for unlimited classes. Cleveland Heights employees pay \$25.00. He said that he has tried to work with Kara about a community talk.

Ms. Hamley O'Donnell stated they were trying to organize a neighborhood meeting but he decided the better venue would be to speak here before the Planning Commission Meeting. She stated they have been open to that for sure.

Mr. Weeden wanted to hold a meeting with the landlord and send out letters through you all to the residents so we can have a talk. He stated when they moved upstairs, music of course to us drives. We then had speakers in each corner of the building. Then the complaints came so we took down 2 speakers that were by the windows. We turned down the music and taped off the control board so the volume did not go over a certain level. This way no matter what instructor uses it they cannot go above a certain level. He said as far as the 6 AM classes, we have two which are on Tuesday and Thursday, and the class is 45 minutes long after that there is no classes until 10 AM. There is a noon class and then the next is at 5:00 PM and then 6 and 7 PM. He stated that 7 PM is the biggest class because his brother and he are teaching it together. He said they have won boot camp award for the City of Cleveland where they have won 2 years in a row. He stated they have been on Channel 8 and they are drawing attention to Cleveland Heights. He stated the lease they signed with the landlord is for 5 years. He stated they want more, he said they want to stay here and continue to build. He stated his members have come in and got off of diabetes medicine and blood pressure pills. He stated that losing weight does that for you. He said when they opened the doors they did not know it was going to be as big as it is. The other brother spoke and said as he stated. We just want to bring a great fitness center to Cleveland Heights. He said that recently he tried to purchase Walmart but they are still leasing it. He stated this gym has really done a lot for him and his life has helped a lot of people in their life as well. Every weekend, he stated he tours cities for Nationally Gifted Fitness Center. Every weekend he is in another state working out. He comes back for 5 days a week, Saturday and Sunday he is gone. He said that he has a lot of people from out of state to come in just to work out,. People from Tennessee, and some from Dubai came to my classes.

Mr. Cobb asked if there were any questions for the applicant.

Mr. Rink said he had a few quick ones, and that he'd be brief.

Mr. Rink first of all thanked Mr. Weeden for his service in Iraq. He continued saying that he does appreciate where he is coming from. Mr. Rink stated we want to be a business friendly city and he knows that he is speaking for himself but he also gets the sense from the City

staff, be he thinks the City also has a responsibility to work this out. He stated the way this developed, we have older buildings, we have businesses mixed in with residents and he thinks more work needed to be done on this particular project. Mr. Rink stated that is easy for him to say because it is your business and he does not want by any means to go out of business but perhaps this is not the right spot for you because of how successful you are. He has to imagine that the city has either or the ability to help rent businesses when they need to expand or perhaps look elsewhere and perhaps there are some county programs that can potentially assist you financially. Mr. Rink stated that he himself is not at a point where he can approve this tonight just because there are these outstanding issues. Mr. Rink does not want them to take that as we would not want you in the city or that you are not running a good business. He stated it is obvious that you are motivated and driven but he was surprised to see this on our agenda when we had staff recommending to deny it, typically that usually gets worked out. He told them he appreciated their willingness to meet with residents and he thinks that has to happen. He feels it has to happen in a dialogue where both sides are trying to come together to try and solve this and this is not the right place. Again, Mr. Rink states this is easy for him to say but you have put so much money already in the place so he is empathetic to that but he would hate to lose you guys and the business in the city overall but he thinks that we do have to work this out in a better way than we have with the local residents and we have not even heard from them yet. Mr. Rink just wanted to say his peace or if he takes a particular action, he thinks there is a way it can all get worked out at this site or at another site. He stated he hopes we can do that, he did not feel it is going to happen tonight but his view point.

Mr. Weeden thanked him and stated we have tried and talked to all these vacant lots that surround here. We tried even talking to Motorcars because there is parking over there.

Ms. Cohen stated she wants to direct this to staff but she thinks it should go to both. She stated she knows that we have a small business center at the library or a small business development center, what kind of efforts prior to coming to the Planning Commission did the city make to direct these men. Ms. Cohen wanted to echo what Mr. Rink said, we never want to turn away business from Cleveland Heights. She stated that as she read through all the city regulations that someone has to go through she knows it is not easy. Ms. Cohen wants to know up to this point what has been done to provide resources or information so this a process for them that they can be assisted with.

Ms. Hamley O'Donnell answered that part of the issue is that they want to be where they are. She stated that Philip and she have had conversations about other places he has looked at but this is where they want to be. She did want to point out this evening that she was not sure that all of you met, as you all know we have been without an Economic Development Director for close to a year and a half and before that we were without someone else. Our new Economic Director is sitting in the corner over there, Tim Boland, listening to things and she is sure his wheels are turning as well. She stated she has had conversations with our intern, Alisha, to create a data base for vacancies if they are interested in looking at other places.

Mr. Wong stated that it is not city policy to relocate a tenant that has not actively sought out service.

Ms. Cohen stated she knows that, she just knows that you work with applicants very closely.

Ms. Rothenberg interrupted and stated that she wants everyone to understand that part of what you see in the Staff Report is they do not even know what amount of square footage is being used and the fact that sitting here tonight with this on the agenda and there still is a discrepancy about the square footage which of course relates directly to how many parking spaces are needed.

Ms. Cohen replied that leads me to my next question. If this application is denied tonight what is the practical effect on their business right now. Like for tomorrow morning.

Ms. Hamley O'Donnell answered that they do not have an Occupancy Permit to be where they are now.

Ms. Rothenberg answered that they currently have Conditional Use Permit from Project 13-11. The reality is that they are exceeding what they are legally allowed to be doing. She said their legal status is not going to change if you deny anything but they have a separate issue because they are currently operating outside of what they are legally permitted to do. She stated that should answer the question.

Ms. Cohen replied "not really" she knows their legal status is going to remain the same but she is curious what does that mean in terms of enforcement, fines, where does this get turned over to. She stated that since she has been on the Commission, we have never denied anything and she just wants to understand what the implications on the business owners.

Ms. Rothenberg answered that she hopes tomorrow they would go back to operating with under the conditions that were granted so they do not have to face the consequences of the possible fines and other enforcement mechanisms in the Building and Zoning code.

Mr. Rink asked if we are allowed to ask the city to work with them to help them find either programs that will help them or programs that would potentially lead to a relocation if that ends up in the best interest of all of the parties. He asked if we are allowed to request that of staff or is that out of our realm.

Ms. Rothenberg answered that you can certainly make that request.

Ms. Hamley O'Donnell answered that "generally as staff people, we like to work with our businesses and we like to keep them in our city so whether you requested it or not, our conversations do take place.

Ms. Rothenberg added that Mr. White is here this evening for any specific questions you might have.

Ms. Cohen stated that in the past we have delayed a decision, so what are our options from that perspective.

Mr. Cobb answered that someone could make a motion to continue this but the public is here. He stated let's do this, let's hear from the neighbors and then we will place it by ear about what we will do at that point and leave it up to the applicant to whether they want to have us continue this for another month while you speak to the city and find some workable solutions but it seems to him the two issues right now are parking and the noise. It looks like you have done a better job on the noise, we have seen the document this evening that maybe there is a solution to the parking fix which may require you to put in your contract

for your people that are signing up, if you are found parking where you are not supposed to park it may mean that you might have to hire a few guys to enforce it by standing out there and look and see if people are parking across the street. Mr. Cobb stated maybe there is a workable solution to all of this. Mr. Cobb stated the neighbors are here and the other business owner so let's hear from them.

Mr. White came back to the lectern and stated that while we are worried about the parking, he thinks a big issue would be that they did occupy a space, without us knowing how many people are up there, if there are the right amount of exits to get these people out of the building so we have no idea what they are doing in that space. Mr. White said based on getting out of the building, do they have stairs, sprinklers, we don't know any of this. If there would be a fire, Ms. Rothenberg asked him to speak into the portable microphone as the conversations are being taped.

A neighbor came to the lectern and stated his name was Mike Giarrizo and he stated he has been sworn in, he lives at 7435 Fairmount Blvd. in Russell and he is the property owner of the property on the Southwest corner, 3080 Mayfield and 1640 Lee Road where the body shop is. He stated that he commends the fellows for their efforts for trying to grow and have that initiative which we all look for in young people and he mentors a lot of them in doing that. Mr. Giarrizo stated that the end result of this is that the hardship for that southwest corner is beyond getting over zealous about it. This cannot go on anymore. He stated he is really worried about the downside of the verbalization of the things going on. He stated he gets calls continuously over this and it's only happened since their growth. He stated that he knows that over the years, he starting owning property in Cleveland Heights in 1959 and every time he did something, we had to have parking. We went through everything to put 7 additions on that building at 1640 Lee Road. He said every time it was parking, parking which he abided by because he wanted to be compliant. At this point, he said the only thing he can say is "it's not working and it is not going to get any better because they are growing and it is hindering what is happening with his tenants because they are calling him complaining that we have to get out. He said the reason they are there, is because he has parking but he can't supply it to the surrounding businesses. He said they have talked and we have called them. Like the Chief of Police has stated, all the complaints, we only go to complaints when it becomes a frustration and figuring maybe the police will help us. He said enough has been said as we have heard all the negatives go on tonight, the only positive is that these guys are hardworking guys trying to grow but they are growing in the wrong spot, that all he could say...Mr. Giarrizo thanked them.

Mr. Cobb stopped the gentleman and "said sir before you sit down, he asked if he would authorize them if they put someone in your lot to check who was parking there and ensure that the people that were parking there were only going to your businesses and not to their class?"

Mr. Giarrizo answered, "yes, he would, in fact he stated he had paid for private people to say that this is not the lot to park in, only customers of the building on the corner can park here". He stated there was a beef on that so he does not see how it is going to work. He stated it is just too convenient. They can go to Starbuck's, or to Motorcars or whatever, people want convenience. This lot is convenient. People just pull in and they walk across the street in their work out clothes, it's pretty obvious where they are going. It is really causing a problem, I try to be business friendly, I always have, I try to low ley it. He stated he believes that a verbal situation is going to explode and he does not want that to happen. He said even his main business was the body shop which he opened in 1959 and did all the

renovations and had problems when he had a customer calling him about the fact that he cannot drop off his car because there is no place to park it. It is hindering everyone on that southwest corner for their growth is hindering us and he can't put up with that anymore. He is pleading for help.

Mr. Cobb asked if there were any more questions before he sits down.

Ms. Cohen asked about the parking lot to the south, is that also your property and is for the body shop. He pointed out on the map on the overhead his property.

Mr. Cobb thanked him.

A man came to the lectern, he stated his name is Mark Rice and is a resident of Whitethorn Road and has been a resident there for 42 years. He stated he finds it very disrespectful this evening here that the main concern is looking at parking for a business that has only been in business for about 3 years, where everyone on Whitethorn Road that he knows, has been residents there for over 25 years. Every day he stated his biggest concern is picking up water bottles, gator aid bottles, energy bar wrappers all day long. They will even park in driveways of houses that people don't even live in. He stated his concern is not parking, his is the noise. He stated you have made a good effort to tray and contain your noise but it is not working, you say that you have put fans up to stop the noise it has not deterred the noise at all. Every single day, all I hear is noise. He said he cannot go out and cut his grass at 8 AM in the morning but he can have a workout class at 6 AM that wakes him up. He stated he was awakened a few weeks ago at 6 AM on a Saturday morning with an exercise class down the street from him. He stated that Ms. Hamley O'Donnell has visited his home and heard the noise. The neighbor stated that he does not believe there is anything that can be done to that old building that will eliminate or stifle the noise that comes from there. He said he would like to share with you at this moment what I hear each and every morning, please forgive me for doing this and I pick up my Plain Dealer and go sit on my desk with a cup of coffee. This is all he hears," Go, GO, Go, Raise those knees, Go, Go , GO, would you want to hear that every day at your house, all day long. No you don't, Cleveland Heights is a residential community, it is not a business community. He stated he opposes you allowing them to add additional space, I wish beyond a shadow of a doubt that there was some way that Cleveland Heights could relocate them. He said he applauds them for their workmanship, and for serving in the service, but it is tearing our neighborhood apart. He said that Council it is your responsibility to protect the citizens of Cleveland Heights. He thanked then.

Mr. Cobb asked if anyone has any questions.

A woman came to the lectern and stated her name is Ms. White, 1620 Lee Road. She stated she would like to thank you for your service, her heart goes out to you because she has children your age and you have aspirations and you have the right to pursue them, however, I too have 3 sons that have serviced in Iraq, one is currently active, he has made it his career and they were residents of Cleveland Heights and graduates of Heights High School with that being said, to Ms. Kara O'Donnell and the committee she stated she is representing Positive Image. She stated it was her understanding that why we are here is to discuss the parking situation. First she would like to clarify to the business tenants occupying the Temple Annex building and the Heights Masonic Temple Building that she harbors no malice and she is not a hater or jealous of your business. She is just simply executing my rights to work at my place of employment without the disrespectful

impositions. This is strictly about the businesses, sometimes people have the tendency to perceive that if a situation goes against their grain, the other party is a hater and that is not true and she wanted to clarify that. As you all know the word hater as you all know, I have kids your age, but the Temple Annex and the Heights Masonic building were built in the times when individuals rode the street cars and walked to where they needed to go. She said with that being stated, there was no need for the buildings to provide parking. As time moved forward and people were afforded the opportunity to purchase personal transportation, this afforded options for individuals to venture out to various areas and patronize businesses outside the community as well as in the community. You young people have dreams and aspirations and that is your right to pursue them, however, it should never be at the expense of others wellbeing and the actions of sabotaging other businesses around you to make yours flourish. We have constantly been harassed and continuously had and are having our parking taken from us. On many days, my clients don't access to the parking I have paid my landlord to provide. This is because it is being taken up by the clients that are patronizing business's in the temple annex and the Heights Masonic Building. She wanted to clarify that it is not just you-all, there are four beauty salons and a barber shop and Supreme Clientel went out without us calling them because they knew they could make some money there. We are inside the building but when our clients come in and say there is no parking, we then have to call up there to the police chief who has been very complaint with us and we thank you for your service as well. She said no one wants to call the police on anybody. She stated her observation is that the tenants in the Annex building constantly use trickery, schemes and disrespect toward the Positive Image Hair Salon and constantly strong arm the parking. Your clientele and customers make disrespectful remarks, portray intimidating gestures and it seems that your clients are being lied to and being told by the individuals in your establishments that it's ok to park here or I have a pass. It's not ok, this conversation that we are having today really should be a conversation with you and your landlord for renting to you under bogus circumstances. He possibly did not tell you the parking was not accessible and he only has limited parking in the rear of his building for live in tenants only. No matter how you plan to reconstruct it, it will never accommodate the massive clients that frequent Naturally Gifted when it comes to having access to parking. There simply isn't a parking. She stated that it is our responsibility to care about our customer's safety to provide ample parking for them. A person that patronizes the business should never ever have to be on pins and needles worrying about and wondering if their vehicle is being going to be ticketed or towed while they are in that business. When a customer has to be concerned about these things, it is uncomfortable and impossible for them to enjoy their visit at that business. This is not considered customer service. If that is not a concern of yours as a business person, then you should rethink your status as a business person. The bottom line is to have our parking being taken from us. She asked them to look at it from the other side, if this situation were reversed, would you have tolerated us stealing your parking or the bullying and abuse for this long. She thanked them.

Mr. Cobb asked her to direct her words to him.

Ms. White was just telling them as a mother of children their age, they are bigger than that and if you could find them a facility they probably would flourish.

Mr. Cobb asked if there is anyone else from the public that would like to speak.

Mr. Cobb pointed to the man in the red shirt and then we will hear from another person.

Ms. Rothenberg swore the person in.

This gentleman came to the lectern and stated his name is Eddy White and he is with his wife tonight.

Mr. Cobb asked if he could give them his business address, please for the record. He stated it is 1633 Lee Road.

He started first of all, let's start with the parking issue. Our first tenants, Club 24, which grew and flourished and the Temple of Islam also. He said that in the last few years, the population of both has demised along with the parking. He stated that if you go down Whitethorn now and you'll see less cars than you have ever seen. It seems that both places have been getting less members attending their meetings. As far as what the Chief mentioned about the corner and people parking. The boys have been perfect gentlemen and he stated he is willing to help them in any way he can. It was mentioned that they have some parking arrangement with the church next to us which should eliminate a lot of this. He said they have had meetings with everyone and we come up with ideas and nothing seems to work. Mr. Cobb asked Mr. White to direct his comments to the Commission. He said since they have been in the building, they have brought in better quality merchants and a better class of people. They are respectful to the area, they are there for one purpose only and that is to get themselves in better condition and while they are there if they see a nice dress that they like, they buy it. Or get their hair done, it has been good for us. He had a couple of ideas, one for the noise, would it be possible to put some sound proofing over the very old and large windows in the building. He did not know but they do it in recording studios and it seems to work. He did not know how the city came up with a number of 25 participants in the basement. We had a ballet school there for over 10-11 years and they were allowed 125 people. As far as the ballroom upstairs, when it was a ballroom, and we had tables and chairs and people, we had an occupancy permit for 212 or 215 people. His classes don't have that many in there now. He stated the building has always been a party center, a meeting center going back 101 years when the Masons first built the building. They are really not doing anything different. He hopes you do take all this into consideration. He thanked them.

Mr. Cobb asked if anyone else wanted to speak.

Mr. Weeden asked if he could address one of the noise issues. He stated that they do not open until 10 AM so there is no 6 AM noise on Saturdays. He stated his 6 AM class is only on Tuesday and Thursday. He stated they can cancel that if it is an issue, that would be an easier thing to do than to relocate, down size or leave. He stated his brother gets up early for the class and then the next class is at 10 AM. He stated their 10 AM class is yoga so there is no noise not from Naturally Gifted, Yoga is from 10 AM to 11 AM.

Mr. Cobb asked what time are your earliest classes during the week.

Mr. Weeden answered 6 AM. He stated the schedule is 10 AM on Monday, Wednesday and Friday.

Mr. Cobb asked if this class is in the basement or upstairs.

Mr. Weeden answered it is upstairs but they can move it to basement. It's the acoustics of it And the high ceilings so if you yell in there, it is going to be loud, especially with a microphone. The brick walls in the basement and everything else will restrict the noise. He stated it is not an issue to cancel it.

Ms. Cohen asked if she could ask one technical question. She asked if there is an entrance in the back.

Ms. Hamley O'Donnell did not know the answer to that. She assumes there has to be other entrances.

Mr. Weeden stated the back door is not just Naturally Gifted. He said coming through the front door it is Naturally Gifted. You still have Club 24 and other people out there in the back and when it gets dark, 80% of our patrons are woman so he did not see them using this door for safety reasons.

Ms. Cohen asked what Club 24 is.

Mr. Weeden answered it is AA-Alcoholics Anonymous. Mr. Cobb asked if he had anything else.

A neighbor stood up again, and Mr. Cobb asked him to lower his voice a bit.

The neighbor stated that even when the police are called and they come to hear the noise, they go to the wrong side. He pointed to the other side since on Whitethorn Road where there is nothing but families. He stated he knows that the Cleveland Heights Ordinance says that no noise before 8 AM and you are having a 6 AM class, you don't think it is going to wake me up.

Before he sat down, Mr. Cobb asked the neighbor when did you notice the noise begin. He answered, when they moved in the building. He said he agreed with what the owner said. He said that before they moved in, there were temples, churches, several beauty and barber shops. There have been a lot of businesses in there. This building is the wrong building for a fitness center because of the acoustics in this building. They need to do what they do in a recording studio. The neighbor stated he knows they are not going to put that much money in to blot out this noise. He said he would welcome them in the neighborhood if he didn't have to hear them all day every day. That is his point.

Ms. Cohen asked the neighbor "where is his house".

He pointed to the overhead and to the 2nd house with a deck.

The neighbor stated that one of the classes was super hyped and he has a schedule when they teach and had recorded them from his deck on his cellphone that he has sent to her (Ms. Hamley

O'Donnell). He has called the fitness center and asked them to tone the noise down. The young lad told him to take it to Cleveland Heights. He stated he has seen the police walk in and stick their head in the door, tell them to quiet down and leave. In 42 years, he has never complained. He told the about the first months he lived in his home and he had to replace sidewalk at his home. He had 4 friends come by at 8PM to help me, police pulled up and told him he could not continue or work past 8 PM. He had mixed concrete and had to stop so He expects everyone that lives or works in Cleveland Heights to abide by the same rules.. He hopes in some way this can be worked out.

Mr. Rink asked this neighbor, Mr. Rice, if it was his wife who submitted the letter.

Mr. Rice answered, no, his daughter. Her bedroom is on that side.

Mr. Mattox stated that with growth, we consider that a good problem. He stated he is hopeful there is a solution even if it is temporary until another facility can be found to better work with but he knows that with any business on that block, growth can come so quickly. He stated he has lived here his whole life and he knows the parking across the street has always been private. He knows how crazy it can get. His hope for tonight is that we can figure out something that will work. He fears this will become a revolving door.

Mr. Rink added that when you get the comment that the residents have to be respected here, and for them to call the city. He stated he has no interest in approving this if this is what they are going to be doing to the residents, it's just not right. He agreed that we need to find a solution that works.

Mr. Cobb allowed one last comment. He told the woman she must come up to the podium to peak.

The lady said good evening again, she just wanted to add for the record, there are always signs posted, ever since she worked there for over 20 years. At one time they had a guard out there and he stopped because people were getting attitudes and he did not want it to blow up out of proportion. She stated they have tried everything She stated that even on their move in day, a U-Haul truck pulled in and she advised that he could not park there. She said the driver just smiled and kept backing it in. It's hard since you are inside so you do not know what is going on out there. She is not blaming you guys, but they change clothes in that parking lot.

Mr. Cobb asked her re-state her name again. Ms. White at 1620.

Mr. Cobb thanked her.

Mr. Cobb asked if there was anyone that wants to make a motion in respect to this Project 16-20.

Mr. Rink asked, our options are approve, deny, or continue is that basically it as a Board.

Ms. Rothenberg answered, correct.

Mr. Rink asked if legally speaking there is any difference denying and continuing.

Ms. Rothenberg answered, “yes” so if you denied, they would have to file another application if they wanted an expansion. If you continue it, then they would have to go through the administrative process again.

Ms. Cohen asked, “just to be clear, continuing from a legal standpoint would also maintain their legal status with the 25 people in the basement as would denying it, so either way their legal status would remain the same but you are saying the difference would be the administrative process, the fees and coming again as a new case to the Commission.

Ms. Rothenberg said “yes”.

Mr. Rink said then he would like to make a motion to try and make it feasible for both parties, meaning the city trying to facilitate additional discussions, he thinks the landlord needs to be a part of this and with all due respect, what happened 50 years ago, it’s a different time and it’s not working right now. He stated he would rather make a continued case than an outright denial.

Mr. Rink made a motion to continue Project 16-20.

Ms. Rothenberg asked for how long, Jeff?

Mr. Rink answered, so we have to put a time frame on it?

Yes.

Mr. Rink asked “Does that mean they will not be able to come back until we say, or are you saying it would expire?”

Ms. Rothenberg answered, right, they would have to file a new application if they didn’t make the time line that is part of your motion or sometimes, what we have seen in the past, let’s say you just did it for one month, if they weren’t able to make it, you might be asked to make an additional motion.

Mr. Rink made the motion for 3 months, we don’t have to wait for 3 months.

Ms. Rothenberg asked that under Robert’s Rules, she’d ask that we not have a discussion until there is a 2nd and if there is not a 2nd, then someone else can make a different motion. We should not start a discussion until there is a 2nd on the books.

Ms. Cohen seconded the motion.

Ms. Rothenberg stated "now you can day whatever you want?"

Ms. Cohen stated she completely agrees with Mr. Rink but she wanted to add that with this continuance, if we could, the Wheeton brothers seem to really want to make immediate changes to their business practices, so in addition to not reverting, she wanted to encourage if we can that the Wheeden brothers actually implement the changes and then we can work with the residents as they are made. She does not want us to come back and have to continue this again.

Ms. Rothenberg stated they are not operating legally and there is very serious building code and possibly problems with the fire code which we don't not know yet. She cannot do anything with that.

Mr. Mattox stated that was also his question, can we get feedback about the inspections?

They are not going to go in there and do a Certificate of Occupancy inspection until they know that Planning Commission has given them a Conditional Use Permit approval. We are sort of the first step so you cannot get that.

Ms. Cohen asked if they can do a preliminary assessment so we at least know what the situation is.

Ms. Rothenberg said she would ask Fred to go up to the lectern and speak to that.

Mr. Fred White, the building official came to the lectern.

Ms. Cohen asked if he could make a preliminary evaluation without going in with the intent of giving a Certificate of Occupancy, can you make a preliminary assessment.

Mr. White answered "we can".

Ms. Cohen, stated so you could inform both the City and the landlord and the tenants as to the problems or lack thereof, budgetary wise, safety wise what are their limitations, or none.

Mr. White answered there is an evaluation needed now for them to move back into the building. The issue here is they are occupying the space without having a Certificate of Occupancy and it is really against our code.

Ms. Cohen asked if they are currently allowed to occupy the basement and she understands they do not have the proper current Certificate. On their annual inspection, they should have posted by their front door how many people are allowed in that space. That will be checked and if that is wrong they will let him know and we need to do something about it.

Mr. White stated for the basement, they are legally occupying that space and on their annual fire inspection, they will go in and check the occupancy load certificate by the front door.

Ms. Rothenberg added that she knows that everyone is pro-business and that is a good thing and we want everyone to know that Fred is licensed and certified so he cannot bend the rules about the building codes. She stated it needs to be really clear that you guys have to stay out of the second floor until you have legal permission to be in there, because it is not legal and you will be forcing his hand if you are anywhere outside of the basement. This needs to start tomorrow. This is the legal reality, she stated she is sorry.

Mr. Gaynier stated he is sort of dubious of continuing this process because he is not sure it is going to satisfy the problem that we got. He said they have applied tonight for a Conditional Use Permit to occupy the second floor which they have been basically occupying without permits for a long period of time and have come here with an application that is incomplete and doesn't address all of these problems, particularly for the neighbors. He stated he is very pro-business and want this to work but he does not see any point to continue with the current application as opposed to just denying it and making sure they address the situation and that they are in compliance and they stop occupying the 2nd floor until they are in compliance. To him it is sort of a black and white situation and he thinks we are going to create more problems for ourselves by trying to bend over and help you, in a way it might be more motivating to just deny the current application, limit you to the basement, to motivate you to comply with all the requirements to satisfy the noise, satisfy the neighbors, and satisfy the parking and so forth. Just work it out if it is the right spot to be.

Mr. Rink stated that since he made the motion, he appreciates that. He does not think that there is the difference that you are indicating there is between continuing and denying. He said what he heard is that the only difference is the administrative fees, and the actually filing of a new application, tomorrow they cannot use the upstairs, we have checked that box and going forward they do not have any approvals that they had or did not have, we go back to what it should have been and he also heard the Building Commissioner mention earlier, if they are operating in a place they do not have a permit or a CO for, you have every right to go into that building. Mr. Rink stated he does not think anyone up here wants to skate anything related to safety or anything like that, he simply made a motion to continue for one reason only and that is to save some administrative fees and to allow the process to continue. This is going to continue one way or another, whether we deny or continue it. Mr. Rink stated unless he wrong, he does think it is that different. He said if you want to shorten the time frame, he is concerned to Jessica's point, them coming back, if we put a month time frame on it. He does not really want to see this.

Mr. Cobb suggested we take a vote, maybe this will answer the question that he has.

Mr. Cobb asked what do you think is a reasonable period of time to address the parking, the litter, and the noise.

Ms. Hamley O'Donnell answered she thinks it depends on the applicants. She stated that in the past, when we have said for than one month, we have done up to 3 months because the reality is,

she did not think they are going to want to wait 3 months. Basically they are in the basement, they want to move up. She felt they would be motivated, she did not want to say 3 months so they have to wait 3 months. She said if they can get it together in the next 2 weeks they could come back in September, if they get it together in the next month they could come back in October. Ms. Hamley O'Donnell stated they are motivated to move quickly. She stated they have had good conversations. As a staff, we could sit down with them and talk, there are a lot of issues to address, she does not know if they could address all and get a staff report together by the September meeting. She said if they are willing to move forward and talk with us about all of these issues and check off the boxes. She said that basically it seems if they are willing to move forward and work with the building department with a preliminary assessment of the space upstairs and talk to the Fire and the Building Department. We need to discuss the parking and the possible monitoring of the lot across the street. She said we need to discuss sound control, if they are willing to do that, if it meets the building and fire codes. She stated there is a lot of stuff and she stated that realistically she did not think 30 days would be enough. With a continuance of up to 3 months.....

Mr. Rink added that he meant up to 3 months.

Ms. Cohen asked if she could add something to Kara's statement. She wanted to add that our houses should be our sanctuary where we can hear and see what we want to. She asked could we also go to that side of the building so we get an accurate sound evaluation. She said if the Wheeden brothers come to you and state they have made the necessary adjustments and when will that be reported back.

Ms. Hamley O'Donnell answered that to be honest, she thinks the problem is when the classes are taking place on the second floor and we are now telling them you cannot have classes there. She said there are a lot of steps to be done.

Ms. Hamley O'Donnell stated she was on their back porch with this daughter, months ago and you could hear the classes and she also has sent me audio tapes of that and what happens, she calls me, I am not in the office and it goes to my VM where I listen to it 3 hours later that is when along with the Police Chief's advice call the police, they can respond quickly and they have the capacity to site them for this. Ms. Cohen stated that she wants to be clear that we care also about the quality of life for the residents. We are all Cleveland Heights residents and so whatever affirmations are made, if and when this application comes back to us, I want to make sure we have whatever evidence we need in addition to the residents' complaints, that it is either taken care of or continues to me a nuisance so we can make an informed decision.

Ms. Rothenberg stated that the motion was seconded and right now they are in discussion. She said when the discussions are over they are going to take a vote so the public part of this hearing is over. She said we can talk after.

Mr. Cobb stated he would like to call for a vote by roll call.

Mr. Gaynier asked her to repeat what the motion is.

Ms. Rothenberg stated the motion is to continue the application Project 16-20 to come back to respond to the concerns that have been raised tonight within the next 3 months. Ms. Hamley O'Donnell added that it could come prior to that, it would then be at the November 9th meeting.

Mr. Gaynier stated in the meantime they will adhere to the current Conditional Use Permit. Ms. Rothenberg replied "yes" but that does not need to be part of the motion.

Mr. Gaynier	Yes
Mr. Howe	Yes
Ms. Cohen	Yes
Mr. Horowitz	Yes
Mr. Rink	Yes
Mr. Mattox	Yes
Mr. Cobb	Yes

Mr. Wong stated it passes and is unanimous.

Mr. Cobb asked the Chief before she left if when her folks are responding to noise complaints, can you ask them to go around to the residential side.

Chief Mecklenburg replied yes.

Mr. Cobb asked if she would have your folks particularly responsive to Mr. Rice and his family members when they are calling in regarding this. Mr. Cobb stated directly to Mr. Rice, he asked if he understood what we have done this evening. They are not suppose to be operating upstairs and then at some point we have another meeting and they will need to address to everyone's satisfaction the concerns that the neighbors have. Mr. Cobb said we will make sure you get notice about our next meeting.

Ms. Rothenberg stated that everyone who received notice for this meeting will get a notice again for when it comes back.

Mr. Cobb asked if there was any old business.

Ms. Hamley O'Donnell stated that there is a memo in your packet.

Ms. Rothenberg stated they had expanded without a Conditional Use Permit but Ms. Hamley O'Donnell researched this and it is fine. She explained that they had been retracted from some areas but the use had not changed or the square footage had not changed. Her understanding is that the building is almost 100% tenanted now.

Mr. Wong stated he would like to again reintroduce our Economic Development, Tim Boland again. He was told about this project yesterday and he hopes that with some current resources and with Brian Anderson as our Business Manager and he will be plugged in as well. He said he looks forward to working with all of you in the next 90 days.

Mr. Cobb asked if there was anything else. There was not.

Mr. Cobb adjourned the meeting at 9:30 PM.

Craig S. Cobb, Chair

Richard Wong, Secretary

/kc