

A G E N D A

MASSILLON PLANNING COMMISSION

Meeting, Wednesday, February 11, 1981

City Council Chambers - 7:30 P.M.

1. Approval of Minutes for the January 14, 1981 meeting
2. Petitions, Communications, and Requests

Rezoning Request

To rezone a piece of property located at 921 Amherst Road, N.E., Lots No. 6988 and 6989, from R-1 Single Family Residential to B-3 General Business. The request is being submitted by George Protos, owner of Amherst Carry-Out, in order to provide for off-street parking and possible future expansion.

Request for Special Land Use

To permit the operation of a game room at 112 South Erie Street, subject to the special conditions of Paragraph 2, Section 170.93 of the City Zoning Ordinance. This request is being made by Attorney Paul J. Stergios, representing James W. Jacobs. (See attached statements)

3. Old Business
4. New Business
5. Progress Reports

The Massillon Planning Commission met in regular session at 7:30 P.M., in Massillon City Council Chambers.

Members Present

Fred Wilson, Chairman
Rudy Turkal, Vice-Chairman
Mayor Delbert A. Demmer
Bernie Green
Frances Layton
Henry Joiner

Department Staff

Robert Wagoner
Aane Aaby

Chairman Fred Wilson called the meeting to order at 7:30 P.M. The first order of business was consideration of the Minutes of the January 14, 1981 Commission Meeting. There being no additions or corrections, the Minutes stood approved as mailed.

The next item on the agenda was a request to rezone a piece of property located at 921 Amherst Road, N.E., the front portion of Lots No. 6988 and 6989, from R-1 Single Family Residential to B-3 General Business. The request was submitted by George Protos, the owner of Amherst Carry-Out. Robert Wagoner reported that the Petition accompanying the Application contains the signatures of 13 out the 24 neighboring property owners. The property in question is located at the north-east corner of Amherst Road and Mader Court. Amherst Carry-Out is located on this property. The purpose of the request is to make the existing business conforming with the Zoning Code and to provide for additional off-street parking. However, Mr. Wagoner felt that B-1 Local Business would be a more suitable zoning change for the area. Attorney William Christoff was in the audience representing the applicant. He stated that B-3 General Business zoning was requested because that district includes drive-thrus as permitted uses. After considerable discussion the Commission decided that Amherst Carry-Out did not fall under the definition of a drive-thru; therefore, B-3 Zoning would not be required. Mr. Christoff mentioned the possibility that gaming devices might be installed in the carry-out.

Mr. Wagoner stated that rezoning could help to alleviate the parking problem in the area. Mr. Christoff said that no expansion of the carry-out facilities is being considered at this time. Mayor Demmer expressed a concern that additional business zoning could result in the Amherst Road area becoming a strip shopping center. Mr. Wagoner replied that a more desirable alternative would be to cluster business uses in the neighborhood. Rudy Turkal made a motion to recommend rezoning the property to B-1 Local Business. Seconded by Bernie Green, the motion carried.

The next item on the agenda was a request to permit the operation of a game room at 112 South Erie Street, subject to the special conditions of Paragraph 2, Section 170.93 of the City Zoning Code. This request was submitted by Attorney Paul J. Stergios, representing James W. Jacobs. After a brief introduction by Mr. Stergios, Mr. Jacobs presented his plan for the game room, which would include video electronic and pinball machines. No cigarettes would be sold and there would be constant supervision by an attendant. Mr. Jacobs also indicated that a restaurant would be located in the building but would be closed off from the game room.

STERGIOS, KURTZMAN, MERCHANT & STERGIOS Co., L.P.A.

PAUL J. STERGIOS
JOHN L. KURTZMAN
J. RICHARD MERCHANT
J. FRED STERGIOS

ATTORNEYS AT LAW
SUITE 301, GILTZ BUILDING
121 LINCOLN WAY EAST
MASSILLON, OHIO 44646

AREA CODE 216
TELEPHONE 832-9678

February 4, 1981

Massillon City Planning Commission
100 City Hall, S. E.
Massillon, Ohio 44646

Attention: Mr. Robert Wagoner

Dear Mr. Wagoner:

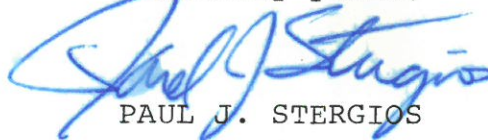
This office represents Mr. James W. Jacobs. Mr. Jacobs is applying to the Planning Commission for permission to open a game room at 112 South Erie Street, Massillon, Ohio. Please put his request on the Agenda for the meeting of February 11, 1981.

It is my understanding that the operation of a game room is covered by Section 170.93 (2) of the Zoning Ordinance.

I have attached hereto a copy of a letter from Mr. Jacobs outlining the plan for operation of the game room. In addition, I will be at the Planning Commission meeting on February 11 and will probably have with me a representative of Mr. Jacobs to answer any questions which might be asked. If you would like any additional information to be brought to the meeting by me, please advise me, and I will do my best to provide it.

Thank you very much for your attention to this matter.

Sincerely yours,



PAUL J. STERGIOS

PJS:bjm
Enclosure
cc: Mr. Art O'Hearn

February 2, 1981

To: The Planning Commission City of Massillon, Ohio

RE: Family Recreation Center

LOCATION

Game room will be located at 112 S. Erie St., with entry on Charles St.
(City parking at corner of Erie and Charles Sts.)

DESCRIPTION

Game room will comply with all City Building Codes. To include Rest Rooms, Snack area and game area. Smoking will be permitted in snack area only. Proper insurance will be maintained.

TYPES OF GAMES

The games will consist of video, electronic and pinball. A Vendor will be used to supply all equipment. Vending machines will be used to vend snacks, beverages, etc. Cigarettes will not be sold.

SUPERVISION AND MANAGEMENT

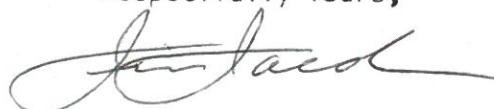
A full time supervisor will be on location during hours of operation.

DUTIES OF SUPERVISOR

- A. To maintain and run in business-like manner.
- B. Will have full authority to restrict any person or persons who do not conduct themselves in an orderly manner.
- C. The right to refuse admittance to any person or persons who appear to be under the influence of alcohol or drugs.

The management feels that a business of this type can be beneficial to the area and will give the students a safe place to spend their idle time. Also will bring additional revenue to the downtown area.

Respectfully Yours,



Thomas V. Ferrero
Director of Law

Municipal Government Center
100 City Hall Street
Massillon, Ohio 44646
(216) 837-4278

Prosecutors:
MICHAEL F. CUSH, Chief
MICHAEL J. STEFANKO
EDWARD J. ELUM

February 16, 1981

Mr. Aane Aaby
Assistant Planning Director
City Hall
Massillon, Ohio 44646

Legal Opinion No. 8 - 1981
Operation of a game room permit

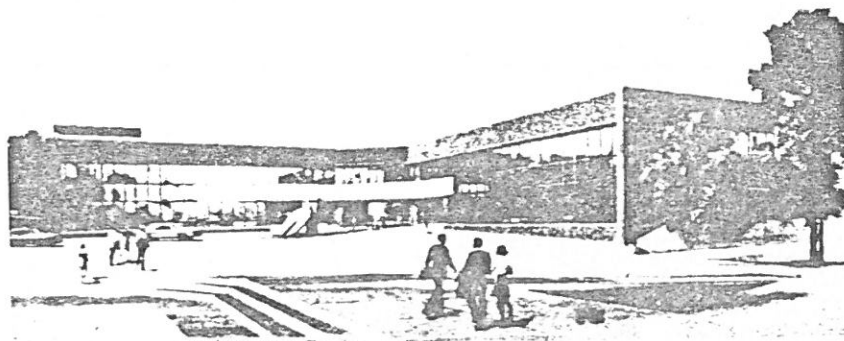
Dear Mr. Aaby:

I am in receipt of your letter dated February 12, 1981 requesting a legal opinion from my office regarding the interpretation of Section 170.93 of the City of Massillon's Zoning Code.

You have asked whether the Planning Commission must approve a request to permit a certain land use once it is determined that the particular location in question meets all of the conditions specified in Section 170.93. Section 170.93 "Principal Uses Permitted Subject To Special Conditions" (B-2 Central Business District) states as follows:

"The following uses shall be permitted, subject to the conditions hereinafter imposed for each use and subject further to the review and approval of the Planning Commission..." (underlining added)

In response to your first question, my opinion would be that the Planning Commission must approve the request. I base my decision on the wording of the ordinance. As quoted above, the ordinance states that uses "shall" be permitted, as opposed to "may" be permitted.



You have further asked whether the Commission has the authority to reject a land use under Section 170.93 even though the property in question meets the specified conditions as set out in Section 170.93. Again I refer you to the part of Section 170.93 which I quoted above. The uses "shall" be permitted if all of the specific conditions are met. This is not a discretionary approval, the use must be permitted if all specified conditions are met. The Commission cannot reject a use once the specified conditions are met as set out in Section 170.93.

Finally you have asked in the Planning Commission's review of such requests, do they have the authority to impose additional requirements, over and above the specific conditions described in Section 170.93? In response to this question, I direct your attention to Section 170.208 (p.86) under "Planning Commission Approval", which states as follows:

"In cases where the City Planning Commission is empowered to approve certain use of premises under the provisions of this Ordinance the applicant shall furnish such surveys, plans or other information as may be reasonably required by said Commission for the proper consideration of the matter.

The Planning Commission shall investigate the circumstances of each such case and shall notify such parties, who may in its opinion be affected thereby, of the time and place of any hearing which may be held relative thereto as required under its rules of procedure.

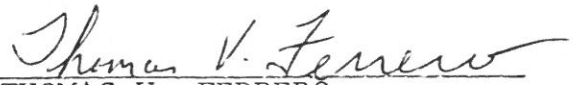
The Planning Commission may impose such conditions or limitations in granting approval as may in its judgement be necessary to fulfill the spirit and purpose of this Ordinance.

Any approval given by the Planning Commission, under which premises are not used or work is not started within six (6) months or when such use or work has been abandoned for a period of six (6) months, shall lapse and cease to be in effect."

Based upon the above it would be my opinion that the Planning Commission may impose additional requirements over and above the specific conditions described in Section 170.93, providing that the Commission's judgment is such that the additional requirements would be necessary to fulfill the spirit and purpose of our Zoning Code.

If you would have any further questions regarding this matter, please advise.

Very truly yours,


THOMAS V. FERRERO
CITY LAW DIRECTOR

TVF:skc