Mayor Infeld called the special meeting to order at 7:40 p.m.

Roll Call: Present: Mrs. Frankie B. Goldberg
Mr. Steven D. Bullock
Mr. Kevin Patrick Murphy
Mr. Steven Sims
Mr. Phillip Ertel
Mrs. Susan D. Pardee

Absent: Mr. Frank Consolo

Also Present: Law Director Kenneth J. Fisher
Clerk of Council Nancy E. English
Finance Director Jennifer Esarey
Chief of Police Gary Stehlik
Deputy Chief of Police James Rohal
Fire Chief John Pitchler
Service Director Christopher Vild
Building Commissioner David Menn
City Engineer Joseph R. Ciuni

Agenda Items:

A. Appeal to the Board of Zoning Appeals decision of June 9, 2010 by Talia Gahanian and Zahava Seltzer regarding the denial of a special permit to operate a take-out pizza restaurant, Top It Off Pizza, at the Heights Jewish Center, 14270 Cedar Road

Mrs. Talia Gahanian, president of Top It Off Pizza, and her business partner, Mrs. Zahava Seltzer, were present along with Mr. Fred Bolotin, Esq., their legal counsel. Mrs. Gahanian filed an appeal on June 15, 2010 to the Board of Zoning Appeals’ decision to deny a special permit to operate a kosher take-out pizza restaurant out of the Heights Jewish Center, 14270 Cedar Road, which is located in a U-2, Two-Family Residence District.

This item was tabled at the City Council meeting of June 21, 2010 for further review of safety concerns. Mrs. Gahanian stated that she and Mrs. Seltzer share the City’s concerns regarding safety and looked at options to improve the potential situation in the parking lot.

In order to address the City’s concerns about the potential conflict of the pool traffic with the pizza business traffic, Mrs. Gahanian proposed additional signs in the parking lot to aid in directing the traffic. The first suggestion would be one or more “Slow Children at Play” signs at the main driveway entrance to the parking lot, but she deferred to the police department for placement of these signs. A second “Stop” sign at the end of the driveway upon entering the parking lot would ensure that traffic proceeds slowly. The third suggestion was for additional, clearer signs reserving the entire front section of the parking lot as synagogue parking only and as a private tow away zone, which would be enforced by the synagogue and/or Top It Off Pizza. The only other signs would be those previously proposed to direct the traffic flow for the pizza restaurant.

Mrs. Gahanian mentioned that they investigated the alternative to relocate and install a kitchen. After performing a cost analysis, they found it to be cost prohibitive and not a feasible option. Mrs. Gahanian reminded the Council that they consider the Heights Jewish Center a temporary, starter location to build the financial backing in order to move to another location within two (2) to five (5) years.

Vice Mayor Goldberg asked about the tax ramifications of a for-profit business operating out of the synagogue which has a non-profit status. Mr. Fred Bolotin explained that the square footage area in which the business operates will be turned into a non-tax exempt area and will not affect the tax exempt status of the synagogue.

Vice Mayor Goldberg mentioned that Joan Horowitz, the concessionaire at the municipal pool, is supportive of the proposal.
Vice Mayor Goldberg asked the owners to consider delivery only during the twelve (12) weeks of the year when the municipal pool and summer recreation programs are underway. Mrs. Gahanian thought it was an interesting idea, but she had to consider the additional costs of a vehicle, hiring additional responsible staff person to make deliveries, background check, and automobile insurance. She was concerned about clientele reaction because once delivery is started they may not want it to stop. Mrs. Gahanian mentioned that traffic would be greatly diminished if they deliver, but she was also concerned about being restricted to no pick up at all.

Mrs. Gahanian stated at this point they will not be able to open until October 1, 2010. Therefore, she requested that if a restriction of delivery only during the summer is a condition of approval, that the situation be reviewed in May 2011 to determine if there is a need for delivery only. She added that they could keep hourly traffic counts to find out when their highest volume is and if the hours overlap with the peak hours at the pool.

In regard to the cost of delivery, Councilman Ertel suggested that they consider hiring a person with his/her own car and insurance and then pay that person an hourly rate.

Building Commissioner David Menn reviewed his memorandum of July 7, 2010 which gave an overview of the issue to date. This item was originally considered at the Board of Zoning Appeal meeting of April 14, 2010, at which time, the application was referred to the Planning Commission. The Planning Commission met on May 10, 2010. However, it as determined that the Planning Commission did not have jurisdiction over the matter and it was referred back to the Board of Zoning Appeals. The Board of Zoning Appeals heard the matter on June 9, 2010 and denied the special permit. Mrs. Gahanian filed the appeal on June 15, 2010. Council heard the appeal on June 21, 2010 and tabled for further review.

Chief of Police Gary Stehlik stated that his concerns remain the same. He mentioned that because the opening in the fence surrounding the playground was closed, all pedestrian traffic is forced to the drive circle. He feels there will be a conflict with cars coming into that area. He also noted that the turning radius for the pickup lane is very tight. Therefore, he believed motorists will go over to the next aisle to make the turn to come along side the building. In response to Mrs. Pardee, Chief Stehlik mentioned that he is not concerned about speeding in the area of the circle. Mr. Ertel suggested removing the first row of parking spaces in order to widen the lane. Chief Stehlik agreed it would help the situation. He added that in the agreement for the use of the parking lot, the City agreed to help reserve the first two rows of parking spaces for the synagogue. Initially, the rows were marked with posts and chains now they are marked with two (2) concrete base signs. He mentioned the area could be roped off again.

Fire Chief Pitchler had no issues.

City Engineer Joseph R. Ciuni stated that the building was not set up to operate a business out of the back. He also noted the area was set up for recreational purposes. Mr. Ciuni mentioned he was not given a site plan to scale or anything to evaluate, so he could not make a decision at this time. He added that the City maintains the lot and the more delivery truck traffic there is, the quicker the lot will deteriorate. Mr. Ciuni confirmed that under the agreement, the first to rows of parking spaces are reserved for the synagogue.

Service Director Christopher Vild had no comments.

Law Director Kenneth J. Fisher stated that the Council should consider the special permit under the criteria set forth in Codified Ordinances Section1244.03 (b) entitled, Special Permits, which reads, “To approve applications for special permits for any uses for which this Zoning Code requires such permits and their approval by the Board, subject to the following requirements and other applicable provisions of this Zoning Code:

(1) The location, size and character of the proposed use is such that, in general, it will be in harmony with the existing development of the district in which the site is situated and will not hinder or discourage the appropriate future development and use of land and buildings in the vicinity or impair their value, and will not conflict with the aims and goals of the General City Plan.

(2) If the proposed site is in a residence district, the proposed use will not result in hazard to pedestrian traffic, especially to children; the height, bulk and location of buildings and the nature, height and location of walls and fences and the extent and character of the landscaping are such that the development will be in harmony with residential community.”
There was discussion about possibly eliminating some of the parking spaces which are reserved for the synagogue, but this may have to go before the Heights Jewish Center’s Board of Trustees. This would reduce the number of parking spaces during the summer when the pool is open. Mr. Bolotin did not expect there to be an issue of safety at the location of the synagogue’s parking area. He suggested monitoring the area and creating a database to determine the amount of cars over the various hours.

It was noted that garbage pickup would remain the same as it currently is with pick up at 6:00 a.m. when the parking lot empty. Deliveries would be made prior to 11:00 a.m. two or three times a week.

Councilman Bullock stated that the concerns regarding safety are real and he could not disregard the concerns of the Police Chief and vote for approval. He noted that the application has gone through the proper process and when an application comes before the Council, there must be compelling reasons to overrule a decision. Mr. Bullock stated that he was not compelled to vote in favor of overruling the decision of the BZA. He added that the use is clearly inappropriate for the site.

Mr. Bolotin stated the synagogue could have taken this on as a fundraiser without coming to the City, but it tried to do the right thing by going through the process. He mentioned that everyone is committed to making sure safety continues. Mrs. Gahanian added that changes were made to address all the concerns of the Police Chief and Fire Chief even at an inconvenience and expense to the business. She stated that they could have a professional traffic study done, if necessary. Ms. Gahanian was open to suggestions or restrictions in order to make it work in a safe manner.

Councilman Ertel stated the conditions and restrictions provides a comfort level for him and would like to make the proposal work. Mr. Ertel suggested a restriction that at any time during the pool season if any of the City officials are concerned the business would be shut down.

Councilwoman Pardee agreed with Mr. Bullock and respects the work of the various boards of the City including the Board of Zoning Appeals. She felt that they were trying to fit square peg into a round hole as far as the site is concerned. However, she was inclined to vote in favor of the appeal if a condition could be attached to the special permit that the two to four parking spaces be taken out and the area be roped off. Mrs. Pardee suggested a second condition that Top It Off Pizza come back in April, 2011 with information as to how the business is doing and the number of cars served to determine if any more restrictions are needed for the summer months.

Vice Mayor Goldberg noted that she was a member of the Heights Jewish Center for many years, but is no longer an active member. Therefore, she will vote on this issue. She noted that the Heights Jewish Center has been a good community member and she wants to continue the good relationship between the City and the synagogue. She would also like to see the business succeed in University Heights. Vice Mayor Goldberg recommended that Top It Off Pizza would provide the traffic data in advance of the summer season. She stated that if the statistics indicate, the City may have to require delivery for twelve (12) weeks. Therefore, the special permit may not be issued for one (1) year, but rather for a few months. Mr. Fisher mentioned that the Board of Appeals has issued special permits for less that one year and has required appearance on renewal. Mrs. Gahanian agreed with coming back before one year, but she could not make a commitment to being in a position where pick up is strictly prohibited. She noted that offering delivery service will greatly decrease the traffic flow coming to the building. Vice Mayor Goldberg noted that there has to be compromises.

Councilman Sims commended Mrs. Gahanian and Mrs. Seltzer for the commitment to their business venture and to their persistence in trying to make the proposal work. He acknowledged the attempts made to accommodate the City’s requests. Mr. Sims recognized the important role that the City boards have in the process and stated that their decisions should not be taken lightly or discounted. He added that he was more inclined to vote in favor of the proposal at the last meeting than he currently is because of the Police Chief’s ongoing concerns regarding safety and the City Engineer’s remarks that the property was not setup to operate a business out of the back. He noted that the area is zoned residential, an institutional use has been allowed on the property, and now a request for a business on the same property is being requested. Mr. Sims recognized that the area in question is not the typical residential area, but he did not want to set a precedent that other residential areas of the city could be opened for inclusion of retail/commercial businesses. He added that there has been a practice of allowing special uses and non-conforming uses throughout the city, and over time the result would be that the city will have a variety of uses within zoning districts.
Mr. Sims asked if the synagogue intends to allow commercial enterprises into its building as a growing endeavor or if Top It Off Pizza would be the only business. Mark Lipman, president of the Heights Jewish Center, explained that all non-profits have financial pressures, especially those of maintaining a large building. He added that it was an opportunity for the synagogue to collect rent on the use of the kitchen. He stated that they are not seeking other businesses, but if this application is denied, and another offer is made, the synagogue cannot say it would not try to take advantage of that opportunity. Mr. Lipman also stated that it is his responsibility to make sure the Heights Jewish Center remains solvent.

Councilwoman Pardee stated that if the business is started, she hopes it is successful. She hoped the business would remain in University Heights if it expands and leaves that site. Councilman Bullock expressed agreement of that as well.

Councilman Murphy agreed with the comments of Councilmen Bullock and Sims. He stated that the Chief of Police is the City’s safety expert and the main issue for him is safety of the children. He liked the idea of the business and would be willing to approve the use until April or May. Although there would be a good chance that in May the business could be shut down or be restricted to delivery only.

Mr. Fisher advised that the special permit does not have to be for one year, it could be granted for nine (9) months. He added that if the use was to continue it would require a renewal of the special permit. Mrs. Gahanian requested that if the special permit is granted that it be granted for a year and it would be delivery only from Memorial Day weekend to Labor Day weekend with a clause to review in April or May to determine if the delivery only clause would be enforced. Councilman Sims stated that he could support that idea and asked what body would review the matter and renew the special permit. Mr. Fisher responded that it would go back to Board of Zoning Appeals because the Council would be overriding the decision of the BZA.

Building Commissioner David Menn inquired that since the parking lot is shared, would the City be legally responsible if someone is hurt. Ms. Gahanian stated that the lot is primarily owned by the Heights Jewish Center, but her insurance covers delivery, the traffic flow through the parking lot, and curbside delivery. Mr. Sims stated that a condition be included that the Heights Jewish Center and/or Top It Off Pizza carry insurance naming the City as an additional insured on the policy.

Mayor Infeld stated that the Board of Zoning Appeals ruled on the matter and did not understand way the matter would go back to the BZA for renewal. Mr. Fisher explained that, pursuant to Section 1244.08 of the Codified Ordinance, the Council has the authority to hear the appeal to the decision of the BZA. But, specific jurisdiction of the granting special use permits is given to the Board of Zoning Appeal. By modifying and overruling the decision of the BZA, assuming that would happen, it would go back to the Board of Zoning Appeals. Mr. Bullock stated that goes to his reason for not supporting the matter. He commented that by overriding the decision of the BZA, Council would be totally disregarding the process. Mr. Sims stated that it would not be a disregard for the process, it may be a modification of the decision that was made, but that has been provided for because there is a provision for an appeal. He also did not want the assumption to be made that because the BZA has to hear something it previously denied that it would have a preconceived belief that it is not working, but rather would consider the matter with new insight and make a decision based on the information that it has been presented.

Mayor Infeld again questioned the logic of having the BZA hear the renewal of a special permit it previously denied. Mr. Fisher cited Codified Ordinance Section 1244.03(c)(5), which sets forth the renewal process of special use permits. The provision provides that special permits shall expire on the anniversary date of issuance and annual renewal shall be approved by the Board of Zoning Appeals. He advised that Council has the authority to allow the applicant to return to it within that one year, but the renewal upon the anniversary date shall be heard by the BZA.

Steven D. Bennett, 3761 Hillbrook Rd., stated that by granting a special permit, the property will be changed into an incubator of businesses. He noted that it would set future precedence that any house of worship could set up an incubator business. He added that there is case law in Ohio regarding this. Mr. Bennett also commented that the property is not setup for a drive-thru. He suggested that the matter be referred to the Planning Commission because the zoning would be changed for the property if the special permit is granted. Mayor Infeld stated that the City has an opinion that the matter could not be referred to the Planning Commission.
MOTION BY MS. GOLDBERG, SECONDED BY MR. ERTEL to overturn the Board of Zoning Appeals’ decision of June 9, 2010 and grant a Special Permit to Talia Gahanian and Zahava Seltzer to operate a take-out pizza restaurant, Top It Off Pizza, at the Heights Jewish Center, 14270 Cedar Road, for one (1) year beginning October 1, 2010 through September 30, 2011, subject to the following: delivery only without exception from Memorial Day 2011 through Labor Day 2011; submission of certificate of insurance naming the City of University Heights as additional insured; any application to renew the Special Permit beyond September 30, 2011 must be submitted to the Board of Zoning Appeals.

Vice Mayor Goldberg recommended that Top It Off Pizza come back before the Council in nine (9) months with monthly data indicating traffic flow to and from the synagogue and number of customers, at which time, the special permit would be reviewed, and action might then be taken by the Board of Zoning Appeals.

Councilman Bullock presented three points: 1) Mrs. Gahanian stated that she could not guarantee that there would not be any pickups; 2) his vote had not changed; 3) he extended his heartfelt best wishes to Top It Off Pizza and the City as it relates to the success of the business.

Councilman Sims stated that, even though it was not an easy choice, he would support the motion. He was glad the BZA would reconsider renewal of the special permit. He added that if there is an appeal to Council upon renewal he would not have an inclination of overturning the Board’s decision because there is noting compelling to grant the special permit other than the applicants desire and possibility that they will incubate a new business that could expand somewhere else in the city.

On roll call, on passage of the motion, all voted “aye,” except Mr. Murphy and Mr. Bullock, who voted “nay.” Motion carried.

B. Ordinance No. 2010-40 Amending Ord. No. 2004-04 to update the fee schedule for emergency medical services (2nd Reading)

Ordinance No. 2010-40, which was placed on first reading on July 26, 2010, amends Ordinance No. 2004-04 to update the fee schedule for emergency medical services in accordance with the National Fee Schedule as follows: Basic Life Support (BLS) Emergency Transport One Way increased from $350 to $450; Advanced Life Support (ALS) Emergency Transport One Way increased from $450 to $550; Advanced Life Support (ALS-2) Emergency Transport One Way increased form $500 to $700; and BLS/ALS per mile transport one way increased from $6 to $10.

Councilman Bullock stated that the increase would put the City’s fees in line with other communities.

MOTION BY MR. BULLOCK, SECONDED BY MRS. PARDEE to approve the passage of Ordinance No. 2010-40 as an emergency measure. On roll call, on passage, all voted “aye.”

C. Resolution No. 2010-41 In honor of Emily Lippert

Resolution No. 2010-41 honors the life of Emily Lippert (a.k.a. “Lippy”) and the impact she had on so many lives. A plaque will be displayed at the city pool, where Miss Lippert worked.

MOTION BY MR. ERTEL, SECONDED BY MR. BULLOCK to approve the passage of Resolution No. 2010-41. On roll call, all voted “aye”

There being no further business to discuss, the meeting was adjourned.

Mayor Susan K. Infeld

Nancy E. English, Clerk of Council