

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS  
JULY - 2023 REGULAR MONTHLY MEETING  
AGENDA**

**DATE:** July 27, 2023

**PLACE:** Commissioners Court Room  
3<sup>rd</sup> Floor, Delaware County  
Building

**TIME:** 6:00 P.M.

**PLEDGE OF ALLEGIANCE:**

**ROLL CALL:**

**Jim Fowler**

**Ellen Brannon  
Delaney Fritch  
Mike Jones**

**Sue Kaiser  
Leslie Mathewson  
Allen Wiseley**

**MINUTES:** Consideration of the June, 2023 regular monthly meeting minutes.

**OLD BUSINESS:**

**BZA 27-23 Jurisdiction: Board of Zoning Appeals**

Being a continuation of a public hearing on the matter of an application filed by **Josiah and Jessica Avery**, 10801 South County Road 419 East, Muncie, Indiana, requesting a variance of use from the terms of the Delaware County Comprehensive Zoning Ordinance to allow business storage in a new 40' x 50' building in a farm zone on premises located at 10801 South County Road 419 East, Perry Township, Delaware County, Indiana, as more accurately described in the application.

**BZA 28-23 Jurisdiction: Board of Zoning Appeals**

Being a continuation of a public hearing on the matter of an application filed by **Robert Huddleston, Steve Maines and 3J7B Real Estate, LLC**, 312 Kings Street, Charleston, South Carolina, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow a decreased sidewalk, decreased greenbelt, decreased buffering and screening, decreased landscape plantings and an increased height for pedestrian light poles, all for a drive thru coffee business on premises located on the northeast corner of Tillotson Avenue and Adams Street, Muncie, Indiana, as more accurately described in the application.

## **NEW BUSINESS:**

### **BZA 30-23 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **CanPack US, LLC**, 2301 West Fuson Road, Muncie, Indiana, requesting a variance from the terms of the Delaware County Comprehensive Zoning Ordinance to allow the foundation landscape area and plantings to be located further away from the building walls for a new manufacturing facility on premises located at 2301 West Fuson Road, Monroe Township, Delaware County, Indiana, as more accurately described in the application.

### **BZA 33-23 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **Kirk and Judi Shafer**, 5600 South County Road 575 East, Selma, Indiana, requesting variances from the terms of the Delaware County Comprehensive Zoning Ordinance to allow no frontage on a public road with no public access to a public road and an increase lot depth for a property split through platting to create a new 2 acre building site on premises located at 5600 South County Road 575 East, Perry Township, Delaware County, Indiana, as more accurately described in the application.

### **BZA 35-23 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **Marvin Griffin Senior**, 1704 East Centennial Avenue, Muncie, Indiana, requesting modification of a variance from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow extended hours and days of operation for a restaurant business on premises located at 1704 East Centennial Avenue, Muncie, Indiana, as more accurately described in the application.

### **BZA 36-23 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **Sonji Hospitality, LLC**, 900 East Main Street, Louisville, Kentucky, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an increased front setback build-to line, increased building height, no bus stop, decreased east and west side bufferyards, decreased sidewalk width, and reduced on-site parking, all for a new 4-story hotel on premises located on the northwest corner of Bethel Avenue and Marleon Drive, Muncie, Indiana, as more accurately described in the application.

## **ADJOURNMENT:**

**DELAWARE-MUNCIE METROPOLITAN BOARD OF ZONING APPEALS  
JULY - 2023 REGULAR MONTHLY MEETING  
MINUTES**

**PLEDGE OF ALLEGIANCE:**

**ROLL CALL:**

Mr. Daniel called roll and the following members were present: Ms. Brannon, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Absent: Mr. Fowler. Also Present: Mr. Murphy, attorney for the Board.

**MINUTES:**

Mr. Wiseley made a motion to approve the June 2023 regular monthly meeting minutes. Ms. Brannon seconded the motion. Voting in favor: Ms. Brannon, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, June 2023 minutes approved.

**OLD BUSINESS:**

**BZA 27-23 Jurisdiction: Board of Zoning Appeals**

Being a continuation of a public hearing on the matter of an application filed by **Josiah and Jessica Avery**, 10801 South County Road 419 East, Muncie, Indiana, requesting a variance of use from the terms of the Delaware County Comprehensive Zoning Ordinance to allow business storage in a new 40' x 50' building in a farm zone on premises located at 10801 South County Road 419 East, Perry Township, Delaware County, Indiana, as more accurately described in the application.

Ms. Matheson stated that this request had been continued from the last months' meeting and stated that there did not appear to be a representative present. She asked Mr. Murphy if it was an automatic denial of the request by the board or if they would need to vote.

Mr. Murphy stated that it was not automatic and that the board must vote on the issue and unfortunately had no discretion and must dismiss or deny the request.

Mr. Jones asked if the applicant had been notified.

Mr. Daniel stated that they had been notified and that they had talked to a staff member in the office and that Mr. Avery had indicated he intended to find another solution and

would not be moving forward with the variance. He was instructed by the staff to send a written request for that withdrawal but that had not happened.

Mr. Wiseley made a motion to deny BZA 27-23 the appeal of Josiah Avery. Mr. Jones seconded the motion. Voting in favor: Ms. Brannon, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 27-23 denied.

### **BZA 28-23 Jurisdiction: Board of Zoning Appeals**

Being a continuation of a public hearing on the matter of an application filed by **Robert Huddleston, Steve Maines and 3J7B Real Estate, LLC**, 312 Kings Street, Charleston, South Carolina, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow a decreased sidewalk, decreased greenbelt, decreased buffering and screening, decreased landscape plantings and an increased height for pedestrian light poles, all for a drive thru coffee business on premises located on the northeast corner of Tillotson Avenue and Adams Street, Muncie, Indiana, as more accurately described in the application.

Joe Calderon, 11 S. Meridian, Indianapolis, IN, appeared to represent the applicant, 3J7B Real Estate. He stated that they are developing a new drive thru coffee shop concept in Indiana called 7 Brew, and they had identified the site at 308 S. Tillotson Avenue as a potential location. He stated that he had provided a book of information for the members to go over and that one of the owners was present to answer any questions. He stated that tab 1 in the book shows the location of the property being in a commercial area, located north of Clancy's Carwash with residential properties to the east, a nail salon to the north, and McDonald's across the street. He stated that this parcel was a total of 14,500 square feet with 1000' of road frontage on Tillotson Avenue and ~142' deep. He stated that when a property had 2 road frontages and in this case the dimensions of the property and being on a corridor it limits the opportunity to meet the requirements. He stated that last month they had asked to be continued in order to work on the site plan and the landscape plans and that had allowed them to remove a few of the variances that they had requested. He stated that they were able to reduce the light pole height to 16' which meets the requirement and that they would now meet the overall 10% landscape requirement. He stated that in tab 4 was the landscape plan for the site which drives a lot of the variances in the request. He stated that a 10' greenbelt was required on Tillotson Avenue which they have met, and Adams Street which they cannot meet with only having 3.5' of landscaping. He stated that they had added many trees and shrubs to provide a significant amount of landscaping along the south property line even though it was only 3.5' wide. He stated that they had buffer yard requirements on the east and north property lines that they were seeking variance from. He stated that the east property owner was not happy with the original curb cut and that they had closed that and added a 6' tall privacy fence and additional landscaping. He stated that due to the residential property across the alley they were required to have a 25' buffer yard and on a lot this size, that would be most of the width. He stated that they had added significant landscape and asked the board to keep in mind that this was a vacant lot that had been this way for many years and that everything they were doing was an improvement to the area. He stated that on the north side they were required to have a

5' buffer yard and that they had run out of room, but had tried to place some of that landscaping from the east to the north. He stated that totaling all of the required landscape and buffering this would require over 5700' in yard space on this site which would be just over 39.5% of the lot and yet the overall requirement in the ordinance was 10% coverage which poses a dilemma. He stated that they had over 10% of the landscape requirement with over 1500' of landscaped area and believe they had added enough foundation plantings to meet the ordinance. He stated that they did have the required sidewalk on Tillotson Avenue and then just south of the south access the sidewalk drops from 6' wide to 5' for a small segment that they would like a variance for. He stated that they worked the last month to make some corrections in order to present a plan that they believe will be a significant improvement over the current lot and improve the neighborhood. He stated that they understand and respect the importance of corridor standards and believe they had provided a beautiful corridor along Tillotson Avenue. He stated that looking at tab 5 shows a typical 7 Brew and the design is perfect for a small lot such as this. He stated that they operate very efficiently with the drive thru only scenario, and that they understand they will need to meet all other requirement for the project. He stated that none of the requested variance would be harmful to the public but will only improve the site and he hoped that the board would be happy with the plans and support the variance requests.

Robert Huddleston, 5508 Old Stone Rd., Muncie, Indiana, appeared. He stated that he and Steve Maines bought the lot over 20 years ago which had been an old service station. He stated that they had removed the tanks and buildings and discovered a leak from the old dry cleaners that created an environmental issue. He stated that they worked with attorneys and took care of those issues and monitored the ground for many years before it was considered clear for development. He stated that in the meantime there was a lot of development in that area and they were passed over since the property had to be off the market for so many years. He stated that this plan is for a small building with a drive thru and no set down eating and believes it will be a good fit for this lot and they will do a nice job developing the site.

Mr. Jones stated that on the site plan it shows parking spaces and asked if those would be for employees.

Mr. Calderon stated that there are parking requirements and that they would provide spaces for employees.

Mr. Jones stated that he was only asking since there would be no set down seating.

Mr. Daniel asked if there was a walk-up window.

Mr. Calderon stated that some of the stores do, but he was not sure about this one specifically.

Ms. Mathewson stated that she travels past this area at least 4 times each day where there is a McDonald's, Starbucks, Dunkin Doughnuts and now this proposed coffee store and that there were frequently accidents, traffic backed up into the street, and people

stopping in the middle of the street. She stated that she was very concerned about the customers entering and leaving and asked how they planned to safely have their customers off the road.

Mr. Calderon stated that they had a dual drive thru lane planned and much like Chick-fil-a, they will have employees taking orders outside to move the traffic thru smoothly and not back up the streets. He stated that they will pull existing traffic from the street by giving an additional choice to customers instead of creating more traffic.

Ms. Mathewson asked if site plans had been provided to the Plan Commission staff for review.

Ms. Calderon stated that they had submitted those plans as soon as he had them, which was late and after packets had been sent to the board and he understood this was their responsibility to turn them in sooner.

Mr. Daniel stated that the plans had been received Tuesday afternoon and they are the plans in front of the board this evening. He stated that he had discussed with Mr. Calderon that staff would not have enough time to do a thorough review of those plans prior to the meeting therefore he does not have a full report to give the board. He stated that the plans had been shared with the City Engineer, Adam Leach, who provided a letter to the board with a list of 6 concerns and requirements for the applicant to work on including ADA ramps, handicap parking, driveway locations, and exit lane location.

Mr. Jones asked if it was possible that the plans would change again.

Mr. Calderon stated that the fact that this was in a corridor overlay district and with the information he received this evening the plans will have to change to receive approval. He stated that he hoped the changes would not trigger more variances but they would need to go back to their civil engineers and change those plans based on Mr. Leach's comments.

Mr. Wiseley stated that based on the newer plans received this evening the ADA ramps on the sidewalk are marked so that concern seems to be addressed.

Mr. Calderon stated that he believed the handicap parking space was added by the civil engineer and if was not correct then they would take care of that issue.

Mayor Dan Ridenour, 300 E. McCulloch Blvd., Muncie, IN, appeared. He stated that the city was very excited to see a property that had been an eyesore for so long have an opportunity to be turned into something much more attractive. He stated that there are similar challenges here as there were for the Raising Caines site that were worked through with the board, the developer, city engineer, and Plan Commission which resulted in a gorgeous site. He stated that this was exciting to see what can be done for this small lot and he appreciated the efforts by the developer to provide the landscaping and address the traffic concerns. He stated that as a big coffee drinker, this will give another option if you see a long or unsafe line at another business and he looks forward to their success.

Amy Brown, 313 S. Manning Ave., Muncie IN, appeared in opposition. She stated that she lived directly to the east of this location and that she was not necessarily in opposition but had some concerns. She stated that she did not think that the lot looked that bad and that Clancy's Carwash was a great neighbor but her main concern was the buffering and asked how tall the fence would be.

Mr. Calderon stated it was 6' tall.

Ms. Brown stated that when she looked at the stores information the hours would be 5:00 AM to 10:00 PM and that was a long time to have headlights towards her house and that a 6' fence seemed too low to help with that. Stated that many of the stores play outdoor music and for her that should mean a little more buffering because she does not want to listen to their music all day. She stated that she had not seen the plans so she was not sure what was moving in next door and would like more buffering and asked if there was a standard size for the fence. She stated that she had pictures of the traffic, the trains, and the accidents that do occur here and that this will bring more traffic.

Mr. Daniel stated that the ordinance called for a 5' vertical buffering between the parking and residential use and a 25' lateral width with a certain number of trees, shrubs, and plants in that area to mitigate the impact commercial use would have on residential use.

Mustafa, 3504 N Rosewood Ave., Muncie, IN, appeared. He stated that he does not know Ms. Brown or anyone else here, he just wanted tell her that there would be lots of traffic and noise. He stated that the board approved a variance near where he lived on Rosewood and that he had not had peace in a year and it sounds like she will go through what he had been dealing with. He stated that speaking from experience, she should ask for a brick or cinder block fence and not settle for anything less than that. He stated that once this was approved the board will not be willing to help you or talk to you and that the ordinance was to ensure the comfort of the community and that was not the case.

Mr. Calderon stated that he had talked with Ms. Brown last month about some of her concerns and that he had emailed her the plans and had an extra booklet he was happy to share with her now. He stated that they would be ok to place an 8' fence if that was what the board would ask for because they want to be a good neighbor and were willing to provide some extra screening. He stated that she had concerns about traffic entering the alley and so they had changed that and added as much landscaping as they could, they just did not have enough parcel to have the 25' width. He stated that he also had a letter of support from Ryan Kramer to share with the board.

Ms. Daniel stated that they had received this letter in their packet of information.

Mr. Calderon stated that this store would pull traffic from existing businesses rather than generating its own traffic and that this was a permitted use in the area. He stated that this was a property that had been as is for around 30 years and that this would be a good redevelopment for the area and did not believe the requested variances to be a significant issue.

Ms. Mathewson asked if the variances were approved, would they need to meet the remaining standards and submit site plans to the Plan Commission.

Mr. Daniel stated that any approval the board grants today would be with the understanding that they would need to obtain all applicable permits. He stated that means they would need to have an approved site plan and that the board can emphasize that by making it a stated condition that they have approved landscape and site plans. He stated that with the kinds of things Mr. Leach has indicated, they would not be able to obtain permits until those items were corrected.

Ms. Mathewson stated that there was an abandoned pole sign to be dealt with.

Mr. Daniel stated yes, and that was something that should be removed since pole signs were prohibited and that there had been no discussion with the applicant about signage other than a wall sign, so there were still some details to be worked out on this site.

Mr. Wiseley made a motion to approve BZA 28-23 the appeal of Robert Huddleston, Steve Maines, and 3J7B Real Estate, LLC with the hardship as stated in the application with the following conditions: 1) That the applicant have an approved site and landscape plan that meets all regulations not covered by these variances; and 2) That the existing pole sign be removed. Mr. Jones seconded the motion. Voting in favor: Ms. Brannon, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 28-23 approved.

## **NEW BUSINESS:**

### **BZA 30-23 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **CanPack US, LLC**, 2301 West Fuson Road, Muncie, Indiana, requesting a variance from the terms of the Delaware County Comprehensive Zoning Ordinance to allow the foundation landscape area and plantings to be located further away from the building walls for a new manufacturing facility on premises located at 2301 West Fuson Road, Monroe Township, Delaware County, Indiana, as more accurately described in the application.

Brad Schoeff, Weihe Engineers, 10505 N. College Ave., Indianapolis, IN, appeared to represent the applicant. He stated that Canpack was nearing the end of the construction of the facility and had encountered a roadblock while finishing the landscaping. He stated since Canpack was part of the food related industry, there were some strict food grade codes locally and internationally that must be adhered to. He stated that the required foundation plantings cannot be next to the building per these codes and they were asking to move them to the other side of the sidewalk. He stated that they would not eliminate any of the plantings, they just cannot be next to the building since it can attract insects and vermin that may enter the building and moving the plantings removes that possibility. He stated that they had submitted a revised landscape plan showing the new location of those shrubs on the other side of the sidewalk away from the building.



Mr. Wiseley asked if they would not have the plantings, what would the ground look like between the sidewalk and the edge of the building.

Kevin Manduler, 52 Kathleen Crt., Fleetwood, PA, appeared. He stated that if allowed to move the shrubs to the outside of the sidewalk there would be a 2' stone barrier and this would be a place for the animal traps as needed.

No one appeared in opposition.

Mr. Wiseley made a motion to approve BZA 30-23 CanPack US, LLC with the hardship as stated in the application. Ms. Brannon seconded the motion. Voting in favor: Ms. Brannon, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 30-23 approved.

### **BZA 33-23 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **Kirk and Judi Shafer**, 5600 South County Road 575 East, Selma, Indiana, requesting variances from the terms of the Delaware County Comprehensive Zoning Ordinance to allow no frontage on a public road with no public access to a public road and an increased lot depth for a property split through platting to create a new 2 acre building site on premises located at 5600 South County Road 575 East, Perry Township, Delaware County, Indiana, as more accurately described in the application.

Mr. Daniel stated that the office had received a letter asking to continue the request to the August meeting and that the applicant was in attendance if the board had any questions.

Mr. Jones made a motion to continue BZA 33-23 the appeal of Kirk and Judi Shafer to the August 31st regular monthly meeting. Mr. Wiseley seconded the motion. Voting in favor: Ms. Brannon, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 33-23 continued to August 31, 2023 regular monthly meeting.

### **BZA 35-23 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **Marvin Griffin Senior**, 1704 East Centennial Avenue, Muncie, Indiana, requesting modification of a variance from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow extended hours and days of operation for a restaurant business on premises located at 1704 East Centennial Avenue, Muncie, Indiana, as more accurately described in the application.

Marvin Griffin Sr., 1704 E Centennial Ave., Muncie, In, appeared. He stated that at his first variance request he had no idea what he was doing or that business would pick up

the way it had. He stated that he needed to change his hours of operation to be open later to survive because when he closes he watches his customers go places that are open later. He stated that there were people around him selling food from their homes and that he had gone to the health department and received all of his certificates to do this the right way. He stated that he had a lot of support from the community and his customers ask him all the time why he isn't staying open later. He stated that he had talked to the ATF and they told him he had done a great job with the building but that he needed to think about being open later hours. He stated that he did not know how to do it until he received the letter from Mr. Daniel that explained he needed another variance to change his hours. He stated that there were a lot of people who do not eat fast food and that they were looking for real food to eat and he received a lot of support to be open later. He stated that there were people in the area that work late and want to get something good to eat after work but he closes too early and that was starting to hurt his business. He stated that there was block parties and bootlegging happening in the community and he was trying to do things the right way and that is bothering him. He stated that he had been a correctional officer for 17 years and decided he had enough and wanted to start his own business. He stated that he doesn't bother anyone, keeps his place very clean, and has even had events for people in the community running for various offices.

Ms. Mathewson asked for clarification that this request was for a modification of the current variance for a restaurant only.

Mr. Griffin yes.

Ms. Mathewson stated that in March of 2022 there were conditions placed on the original variance for the restaurant which included only being open from 10:00 AM to 6:30 PM, however the sign for the business states they were open until 7:00 PM.

Mr. Griffin stated that he had miscommunicated the information when he had the sign made, but it was a \$400 sign so he was going to cover that up.

Ms. Mathewson stated that the board had received many photos of facebook postings and asked if he had a facebook page.

Mr. Griffin stated yes, and that he had a Griffin Social Club page, but he had not posted anything for a while.

Ms. Mathewson stated that some of the posts from the facebook page were showing events that had been taking place with hours from 10:00 PM to 2:30 AM and asked if he was posting these pictures or if it was someone else.

Mr. Griffin stated someone else must be posting them. He stated that when the gentleman from excise came to him, he said that he could sell beer until 3:00 AM, and he forgot what had been discussed at his last variance and he did not know he needed to come back here to change those hours.

Ms. Mathewson stated to be clear that Mr. Griffin was here asking for a modification for longer hours of operation for a restaurant only.

Mr. Griffin stated yes, and he stated that he apologized to the board for being open later he was just going by what the excise gentleman had said to him. He stated that he knows now that he needs to work with the state and city rules.

Ms. Mathewson stated that under the current ordinance a social club was not a permitted use under this zoning.

Mr. Griffin stated that it was not a social club, it was just his name.

Ms. Mathewson stated that according to the pictures there was dancing and hip-hop contest and other things.

Mr. Griffin stated that when people eat he had music playing to create a different environment to make money.

Ms. Mathewson stated that the facebook posts makes it appear that this is more than just serving food at a restaurant.

Mr. Griffin stated that he went through all of the proper steps so that he would not have any problems with anything.

Ms. Mathewson stated that some of the posts are dated April of this year.

Mr. Griffin stated that he had been closed a lot trying to get all of his permits.

Ms. Mathewson stated that Mr. Griffin was doing a good job of explaining what she believes the posts are depicting. She asked if serving alcohol was permitted in this zone.

Mr. Daniel stated that he was not an expert on alcohol licensing but he did know that restaurants can sell alcohol with the proper license and that it was not uncommon to combine a bar as part of a restaurant business. He stated that there was nothing specifically addressed in Mr. Griffin's previous variance about selling alcohol or having a bar in the restaurant. He stated that the board could address that tonight, but the notices made no mention of anything other than restaurant use so that was all that could be entertained under the current request. He stated for clarification for everyone, this site was in a Limited Business Zone which does not permit restaurants, taverns, social clubs, or event venues unless the board were to grant a specific variance for those uses. He stated that last year Mr. Griffin was granted a variance approval for a restaurant use with conditions, and tonight he was asking for an extension of the hours and days of operation for the restaurant use that was approved. He stated that if the board approves the request tonight, that is for a restaurant, not an event center for parties or to rent to another entity to have their event as we have seen in the photos. He stated that a social club by zoning standards was different than a restaurant, which involves private membership as opposed to a public facility.

Mr. Griffin stated that he would change the name if he needed to in order to get rid of the problem.

Ms. Mathewson stated that she did not have an issue with the name, the focus was more of what the business was actually doing and making sure it was only the restaurant.

Mr. Griffin stated that he serves food and tries to help people in the community and not hurt anyone. He stated that in the summer he is at the grill all day working hard and maybe someone out there just does not want to see his business succeed.

Mr. Jones stated that he understood that a restaurant could serve alcohol with food, and asked if what was currently being done was permitted according to zoning.

Mr. Daniel stated that the only way Mr. Griffin could operate a restaurant at this location was by a variance, and none of the other activities mentioned could be operated without a variance either.

Mr. Jones stated that basically he was in violation right now.

Mr. Daniel stated that he had sent Mr. Griffin a letter based on a complaint received that indicated that he was open days and hours that he was not approved for. He stated that Mr. Griffin learned by that letter that he would need to ask for a modification of the business hours since he was in violation of the original variances granted.

Mr. Jones asked if it was appropriate for the board to be approving a request to change business hours when the board was aware that the business was in violation of current ordinances.

Mr. Murphy stated that an appropriate consideration and was up to the board to decide whether to approve the variance in front of them considering all of the factors. He stated that there had been some discussion about a restaurant being permitted to also serve alcohol. He stated that alcohol was solely within the jurisdiction of the alcohol board and cautioned the board about making any conditions related to alcohol at the premises.

Mr. Griffin stated the he was sorry for being in violation and that he was here to fix everything.

Mr. Jones stated that it was not that he had violated the conditions, but that he was currently in violation.

Ms. Brannon stated that she was not on the board during the original variance request, and asked what were the state guidelines.

Mr. Murphy stated that generally alcohol can be served until 3:00 AM as matter of state law, and would make sense for an excise officer to inform Mr. Griffin of that rule, however that was not consistent with this boards' previous decision.

Melissa Criswell, Deputy Chief, Muncie Police Department, 300 N. High St., Muncie, IN, appeared in opposition. She stated that the goal of Muncie Police was for the citizens in this community to have a safe enjoyable experience wherever they were going and for business owners to have a prosperous and successful business. She stated that after researching the calls for this location they had several concerns about the nature of those calls and the hours as well. She stated that she had pulled call information going back to March 2022, and the nature of the calls were all shots fired, there was a shooting in April, and a call for fight calls when people would not leave the restaurant. She stated that the times of all the calls were well past 6:30 PM, all the way to 5:45 AM and these were all calls listed for the 1704 E. Centennial Ave address and that she had not checked the entire block range and many calls included fighting, shots fired and a stolen vehicle. She stated that April 22<sup>nd</sup> 2023 at 3:59 AM a female victim had been shot and located on the site and body cam footage showed several people in the parking lot and people inside. She stated that Mr. Griffin was cooperative with the officers there, and was inside the business and stated he had just run off 7 people who were trying to fight. She stated that Mr. Griffin stated that the shooting did not take place on his lot, but the shell casings were found on his lot along with the shooting victim. She stated that Mr. Griffin's name and phone number were connected to some of the incidents where he had been calling for help or shots fired. She stated that they had other complaints about people causing disturbances in the parking lot and the street resulting in several police calls during the past year. She stated that for the shooting incident there had been at least 16 officers, not counting Detectives, during 2 shifts were on that call for several hours. She stated that they had also seen the social media posts that, in her opinion, are advertising this location as a club which fits with what the officers see when they arrive on scene. She stated that in a shift update from the shooting one of the officers wrote "this was a somewhat chaotic scene and the shift did a good job handling the situation". She stated that the property where all of this takes place was very close to apartments and other homes in the area.

Ms. Mathewson stated that those reports and pictures could be submitted for our records.

Ms. Criswell stated that she could provide redacted copies for the board.

Johnathan Mitchel, 1901 N. Elgin St., Muncie, IN, appeared in opposition. He stated that he was here to support an individual that lives across the street from the business. He stated that at the time he was granted a variance for a restaurant, the neighbor was in support of that in the area. He stated that it had been a year, and no one had seen a menu or eaten a real meal during the approved hours for the business. He stated that he feels this was very disrespectful to the board and that people in the area feeling unsafe due to the things that are happening here. He stated that one of the neighbors had shots fired at their house and that their oldest child was lucky to be ok. He stated that Mr. Griffin saying that no one is supporting him was false, they will support anyone in the area doing things right. He stated that he was the president of a non-profit from here and he helps a lot of people in the area as well as the Whitley Community Council and they support what was right. He stated that there may not be as many people here in opposition if Mr. Griffin was just doing what he said he was going to do and what the board approved. He stated that the lot had a great shape for a drive-thru and get a meal, but all that was happening was people being injured as a result of what he was doing.

He stated that the community was in full support of a restaurant, but he doubted that was something that they would ever see happen.

Frank Scott Sr., the current president of the Whitley Neighborhood Association, 1005 N. Gavin St., Muncie, IN, appeared in opposition. He stated that he was not necessarily in opposition of allowing the hours to be extended because he believes Mr. Griffin is a good person with a good heart and he wants to support small business. He stated that he would like to know what the extended hours would be, and make sure that the only things happening at property are those things that are approved. He stated that he receives calls about parties going on at the property and has suggested they call police to make a record of the problems. He stated that Connection Corner, Huffer Daycare, Longfellow Elementary, and a church all around the corner as well as older people who go to bed early and do not want to hear all that noise late at night. He stated that Mr. Griffin had called the police for things that have happened outside the hours permitted, and if he was supposed to be closed he should not have even been there to have to make that call.

Mr. Wiseley asked Mr. Daniel to state the hours listed in the application.

Mr. Daniel stated that the hours requested in the application was Monday-Thursday 10:30 AM to 1:30 AM, Friday-Saturday 10:30 AM to 3:00 AM and Sunday 10:30 AM to 7:00 PM.

Cornelius Dollison, 1801 N. Elgin St., Muncie, IN, appeared in opposition. He stated that he was here to speak in opposition for Akeelah Nosakhere, Director for the Muncie Public Library, and Connection Corner. He stated that she was concerned about the parties and the hours this all takes place and how they would affect the Connection Corner that was close to this property. He stated that he appreciated and supported Mr. Griffin trying to learn the restaurant business but that he was opposed to anything going on at 3:00 in the morning, He stated that he did not want to hear gunshots from the area and worrying about people in the area that late. He stated that he thought Mr. Griffin had a beer and wine permit, which was not the same as an alcohol permit.

Ms. Mathewson stated that he had a beer, liquor, and wine restaurant permit that had been issued by the ATF Commission a week ago.

Mr. Dollison stated that he did not know he had the liquor permit and that if he does, he was opposed to all the long hours to be open.

Sarah House, 1707 E. Centennial Ave., Muncie, IN, appeared in opposition. She stated that she lived across the street, and did not have much more to add to what had already been said. She stated that her house was the one that had the \$10,000 worth of damage done due to bullets, and her son could have been killed. She stated that in the last year she has had 3 people jump her fence onto her property from Mr. Griffin's property. She stated that when she worked on the weekends it was difficult to get enough sleep because of all the noise. She stated that she had nothing against Mr. Griffin and was not opposed to the restaurant she just did not want to see the extended hours. She stated that no one wants a bar across the street with people shooting at houses and that was a concern she had.

Mr. Griffin stated that he had been instructed to call the police if there was trouble and let them deal with things and to not intervein and that he had called multiple times in the same night because of fighting. He stated that he will always call the police to help out and to cover himself when there was a problem. He stated that anyone that had ever been to the restaurant would know that there was a menu inside the bar where he sells liquor.

Ms. Mathewson stated that he could only sell liquor in conjunction with food.

Mr. Griffin stated that if they had come inside they would see the menu where he sells beef, BBQ, fish and more.

Ms. Mathewson stated that there had been some concerns about the late hours, which was also a concern she had. She stated that if you go to a bar, they tend to stop serving food around 10-11 PM, and asked Mr. Griffin if would be willing to change his hours to not be open so late.

Mr. Griffin stated that he just wants to be able to take care of his family and it was in the boards' hands now. He stated that as far as the neighbor that had her house shot at, there was a group of kids running around the neighborhood and it had nothing to do with him.

Ms. Brannon stated that when she thinks about the chain restaurants in town, they typically close around 10-11 PM and they do serve alcohol with a meal. She stated that a bar will serve alcohol with your meal until the kitchen closes, which was usually around 10-11 PM, and asked at what point do we cross the line between a restaurant and a bar and were there guidelines or restriction in place to make that determination.

Ms. Mathewson stated that in order to move forward, was Mr. Griffin still asking to have his restaurant operate during the days and times as listed in his application or would he be willing to modify those hours.

Mr. Griffin stated that he would have to be open everyday of the week to compete and make a living. He stated that he could close earlier on a Friday or Saturday if the board wanted him to even though he would lose money.

Ms. Mathewson asked what he would be willing to change his hours to.

Mr. Griffin stated he had people that work third shift and want to come eat when they get off work so he would change it to 1:00 AM all days and keep Sunday at 8:00 PM.

Mr. Daniel stated that the application stated 7:00 PM on Sunday.

Mr. Griffin stated ok.

Mr. Wiseley made a motion to approve BZA 35-23 the appeal of Marvin Griffin Sr., with the hardship as stated in the application with the following conditions: 1) That the hours of operation be changed to no later than 1:00 A.M all days except Sunday; and 2) That

conditions #2, #3, and #4 from BZA 05-22 remain in place. Mr. Jones seconded the motion. Voting in favor: None. Voting against: Ms. Brannon, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Motion failed, BZA 35-23 denied.

Mr. Daniel stated that the approved variance from last year still applies with all of its conditions for a restaurant only, not an event center, social club, or club.

Mr. Griffin asked how he was supposed to survive.

Mr. Daniel stated that he might consider moving his business to a location that was zoned for a restaurant use where he would not require a variance, and then he could have different hours. He stated that because he was in a Limited Business Zone and does not permit restaurants, he was limited to the conditions of the variance that was approved last year.

Mr. Griffin stated that he just spent thousands of dollars purchasing a liquor license.

Mr. Daniel stated he understands the hardship and that he needs to consider his options.

Mr. Griffin asked if he had the right to come back.

Mr. Murphy stated yes, he should consult with counsel to determine what his next steps could be.

### **BZA 36-23 Jurisdiction: Board of Zoning Appeals**

Being a public hearing on the matter of an application filed by **Sonji Hospitality, LLC**, 900 East Main Street, Louisville, Kentucky, requesting variances from the terms of the City of Muncie Comprehensive Zoning Ordinance to allow an increased front setback build-to line, increased building height, no bus stop, decreased east and west side bufferyards, decreased sidewalk width, and reduced on-site parking, all for a new 4-story hotel on premises located on the northwest corner of Bethel Avenue and Marleon Drive, Muncie, Indiana, as more accurately described in the application.

Alex Beaty, 900 E. Main St., Louisville, KY, appeared to represent the applicant. He stated that he was a developer proposing building a Home2 Suites at this location, and that 2 prior variances had been granted for this site. He stated that he had not been involved at that time, and there may have been a misunderstanding at the time those were approved that the variances needed to be initiated within a 6-month period. He stated that this group also owns the Hampton Suites Hotel to the east of this site which was currently being farmed and had been for a long time. He stated that the site was an awkward size and that they were trying to preserve the corner for a future use such as a restaurant or medical office. He stated that this was located on Bethel Avenue which does have corridor standards with a maximum setback of 20' for the building, where a lot of infrastructure is located and they would like to keep the hotel as far back from that area as possible. He stated that placing the hotel in the middle of the site allows them to have



an easier fire access and guests access in the front of the building. He stated that another variance referred to the buffer yard to the east, and the access yard is placed where the buffer yard should be. He stated that in order to have 1 access and make it easier to enter from Bethel Avenue, they were asking to eliminate that buffer yard requirement. He stated that there was a requirement in the corridor standards that a building over 50,000 square feet, which this was, there needs to be a bus stop in front of the development and due to the amount of infrastructure in the front, it was difficult to place a bus stop shelter there. He stated that he had talked to Amanda Clark-Price with MITS and since they own the acreage to the east and around the Hampton Inn, they were working together to figure out what makes the most sense at that intersection where Marleon Drive and Bethel Avenue meet. He stated that this was a typical Home2 Suite elevation and that they would be just a little more than 50' tall, but he requested 55' just to allow a little wiggle room. He stated that there had been a lot of changes in the hotel world since the late 1990's where those hotels were all 3 stories with approximately 70-80 rooms where now the standard was 4 stories and 100 rooms. He stated that there was a sidewalk installed in 2019 that was 4.5' wide, and it seemed odd to remove a fairly new sidewalk to replace it with a 5' wide sidewalk to meet the requirement.

Ms. Wiseley asked if they were prepared to build within 6 months on this site.

Mr. Beaty stated yes, that they were pricing out the construction plans currently to evaluate what the actual costs would be. He stated that Hilton needed to review the plans and make sure that it meets their prototype requirements, and if those match they should be submitting for permits in September or October.

Mayor Dan Ridenour, 300 E. McCulloch Blvd., Muncie, IN, appeared in support. He stated that he had met with the developer a number of times and that they had been working with the City Engineer. He stated that they were trying to help come up with restaurants and other opportunities for the surrounding land, and was very much in support of the request.

No one appeared in opposition.

Mr. Wiseley made a motion to approve BZA 36-23 the appeal of Sonji Hospitality, LLC with the hardship as stated in the application. Mr. Jones seconded the motion. Voting in favor: Ms. Brannon, Ms. Fritch, Mr. Jones, Ms. Kaiser, Ms. Mathewson, and Mr. Wiseley. Voting against: None. Motion carried, BZA 36-23 approved.

## **ADJOURNMENT:**

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Leslie Mathewson, Vice-Chair

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Fred Daniel, Acting Secretary