

**STATE OF INDIANA
BEFORE THE ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF)	
)	
21st CORNER, LLC)	
d/b/a MAGNOLIA CAFE)	PERMIT NO. RR49-30353
8134 E. 21st STREET)	
INDIANAPOLIS, IN 46219)	
)	
Applicant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND OF THE CASE

21st Corner, LLC, d/b/a Magnolia Café, 8134 E. 21st Street, Indianapolis, IN 46219, permit number RR49-30353 (Applicant), is the applicant for the renewal of a permit to sell beer, liquor, and wine, in a restaurant located in an incorporated area to be issued by the Alcohol and Tobacco Commission (ATC). The application was assigned to the Alcoholic Beverage Board of Marion County (Local Board). The Applicant's matter was heard on July 20, 2015, where it was denied by a vote of 4-0. On August 4, 2015, the Commission adopted the findings of the Local Board and denied the permit. On August 28, 2015, the Applicant filed for an appeal hearing regarding the Commission's denial, which was granted.

The matter was set for hearing on December 10, 2015, and that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. The Hearing Officer also took judicial notice of the entire contents of the file related to this cause. Having been duly advised of the facts and law at issue, the Hearing Officer now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

II. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
1. Kathy Nguyen, Owner.
- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
1. None.
- C. The following individuals appeared before the Local Board against the Applicant in this cause:
1. Sgt. William Carter (Indianapolis Metropolitan Police Department (IMPD));
 2. Angela Krahulik, Ice Miller attorney representing remonstrators;
 3. Norman Pace, Far Eastside Neighborhood Association (FENA);
 4. Linda Duncan, AAA Motor Club
 5. Mary Zimmerman, AAA Motor Club
 6. Bob Kindred, FENA;
 7. Stanley Payne, FENA;
 8. Mildred Pace, FENA;
 9. Shirley Wilson, FENA;
 10. Kathy Sapper, Braeburn Village; and
 11. Nancy Beals, Drug Free Marion County.
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:
1. Partial Transcript Marion County Local Board March 17, 2014 (Exhibit 1);
 2. Social Media Ads for Applicant (Exhibit 2);
 3. IMPD Report DP15021300 (Exhibit 3);
 4. IMPD Report DP15024149 (Exhibit 4);
 5. IMPD Report DP15029844 (Exhibit 5);
 6. Patricia Miller Letter (Exhibit 6);
 7. WTDA Letter (Exhibit 7);
 8. FENA Letter (Exhibit 8); and
 9. Petitions (Sixty-six (66) signatures) (Exhibit 9).

III. EVIDENCE BEFORE THE COMMISSION

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
1. Vickie Nguyen, Owner.

B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:

1. Certified Affidavit of Vickie Nguyen (Exhibit A).

C. The following individuals testified before the Commission against the Applicant in this cause:

1. Sgt. William Carter.

D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:

1. Social media ads (Exhibit 10).

IV. FINDINGS OF FACT

1. 21st Corner, LLC, d/b/a Magnolia Café, 8134 E. 21st Street, Indianapolis, IN 46219, permit number RR49-30353, is the Applicant for a beer, liquor, and wine restaurant permit. (ATC File).

2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code § 7.1-3-4-2. (Local Board Hearing; ATC Hearing).

3. The Applicant was last renewed at the Marion County Local Board, March 17, 2014. (ATC File, Local Board Hearing).

4. At the March 17, 2014 Local Board Hearing, Applicant stated their intention to operate a bar and grill, serving families during the day (Exhibit 1, Local Board Hearing).

5. Due to the configuration of the premises and the Applicant making no provisions for limited separation, they were able to allow only people of the age 21+ into the bar. (ATC Hearing).

6. At the March 17, 2014 Local Board Hearing, Applicant stated they would be hiring off-duty IMPD officers, who would have arrest powers, to work security for the bar. (Exhibit 1, Local Board Hearing).

7. For an unknown reason, Applicant was unable to hire off-duty IMPD officers and instead hired private security, who conducted pat-downs, required two (2) forms of identification, and banned certain clothing such as bulky coats in which contraband could be concealed. (ATC Hearing).

8. At the March 17, 2014 Local Board Hearing, Applicant stated they would not be using promoters, club promoters, or putting on big events. (Exhibit 1, Local Board Hearing).

9. Applicant used promoters, club promoters and hosted big events. (Exhibit 2, Local Board Hearing, ATC Hearing).

10. On February 28, 2015, IMPD responded to a person struck in the parking lot of the premises. Witnesses stated that they had seen the victim in the premises earlier. (Exhibit 3, Local Board Hearing).

11. On March 8, 2015, IMPD responded to a person shot in the parking lot of the premises. When the responders arrived, the victim was pronounced dead. Further investigation revealed that the murder might have stemmed from an argument in the premises. (Exhibit 4, Local Board Hearing).

12. On March 22, 2015, IMPD responded to a fight on the premises which required twenty (20) IMPD officers to quell. (Exhibit 5, Local Board Hearing)

13. There have been no Indiana State Excise Police citations issued to the Applicant. (ATC File).

14. The Applicant closed the premises in April, 2015. (ATC Hearing).
15. The Applicant placed the permit into escrow on November 18, 2015. (ATC File).
16. The Applicant tendered an affidavit in which Vickie Nguyen promised:
 - i. Not to reactivate the permit at 8134 E. 21st Street, Indianapolis, IN;
 - ii. Not sell the permit to the above-stated address;
 - iii. Not associate herself with any future business at the above-stated address;
 - iv. Will remonstrate against any bar attempting to locate at the above-stated address;
 - v. Will not use the permit to operate in Warren Township; and
 - vi. Will not open as a night club or bar.

(Exhibit A, ATC Hearing).

17. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and Ind. Code § 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.
3. The Commission is authorized to act upon proper application. *Id.*

4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).

5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission, including a public hearing and a review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).

6. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).

7. The Commission may reverse a local board's action in denying an application for a permit *only* if it finds that the local board's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; or (d) without observation of procedure required by law, or unsupported by substantial evidence. Ind. Code §7.1-3-19-11.

8. In this case, the Local Board's decision was not arbitrary or capricious, nor did it fit any of the categories which would allow it to be reversed. (Local Board Hearing).

9. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.


IV. RECOMMENDATION

When the present owners received this permit via transfer in 2014, they made certain assurances to the local board. These assurances were not fully honored. Though this alone

cannot be the basis for denial, the fact that people were injured and killed on the premises might have been avoided had the initial business plan been followed. Unfortunately, the owners believed that they could not meet financial obligations under those constraints, and they proceeded to use promoters, etc. to increase business. This, though, is no excuse for deciding on a course of action that may have caused the circumstances that took the life of a victim, as well as caused injury to others.

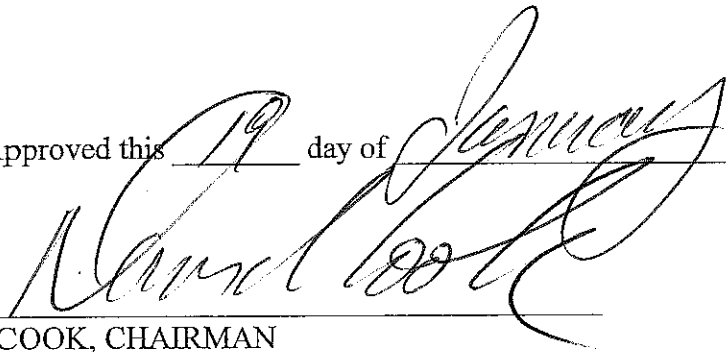
THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the decision of the Marion County Local Board resulting in a 4-0 vote to deny the application for the permit number RR49-30353, was supported by substantial evidence and was neither arbitrary nor capricious, and the Alcohol and Tobacco Commission should deny said application. The application of 21st Corner LLC, 104 E. 21st Street, Indianapolis, IN 46219, for a beer, liquor, and wine retail, was not sufficient and the permit applied for herein is DENIED.

DATE: December 16, 2015

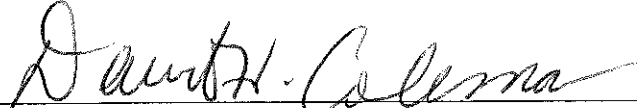


David Rothenberg, Hearing Officer

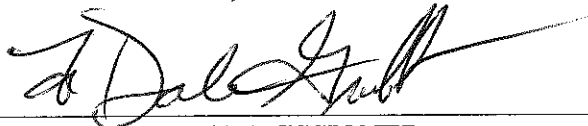
Approved this 19 day of January, 2016.



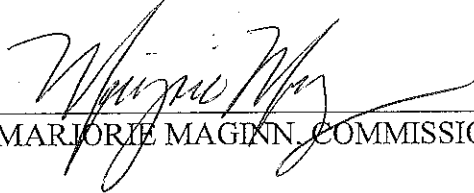
DAVID COOK, CHAIRMAN



DAVID COLEMAN, VICE CHAIRMAN



DALE GRUBB, COMMISSIONER



MARJORIE MAGINN, COMMISSIONER