

STATE OF INDIANA) IN THE HAMILTON CIRCUIT COURT
) SS:
 COUNTY OF HAMILTON) CAUSE NO.: _____

MIB, LLC,)
 Petitioner/Appellant,)
)
 v.)
)
 BOARD OF ZONING APPEALS)
 FOR THE CITY OF NOBLESVILLE,)
 INDIANA, et. al.,)
 Respondent/Appellee.)

VERIFIED PETITION FOR STAY OF DECISION PENDING APPEAL

Comes now the Petitioner/Appellant, MIB, LLC (“MIB”), by counsel, and pursuant to Indiana Code §36-7-4-1609, files a Verified Petition for Stay of Decision Pending Appeal. In support of its request, MIB states as follows:

1. MIB is a business operating at 15480 Herriman Boulevard, Noblesville, Indiana, 46060.
2. On or about April 26, 2022, MIB received a Letter of Determination from Caleb Gutshall, Director Planning and Development, Noblesville, Indiana. *See* Exhibit “A,” attached hereto and incorporated herein.
3. In the April 26, 2022 letter, the City of Noblesville determined that MIB was in violation of two (2) definitions found in Article 2 of the Unified Development Ordinances (“UDO”); specifically stating that MIB was a sex shop, selling sexually oriented toys and/or novelties (“Determination”). *Id.*
4. On May 27, 2022, MIB filed an appeal of the Determination, stating and providing evidence that MIB is not a sex shop, nor does it promote or sell sexually oriented toys and/or novelties.

5. On August 1, 2022, the Board of Zoning Appeals for the City of Noblesville, Indiana (“BZA”) held a public meeting on MIB’s appeal of the Determination.

6. On August 1, 2022, the BZA received evidence from the City of Noblesville, through and by Denise Aschleman, Senior Planner, and Beth Copeland, City Attorney.

7. On August 1, 2022, the BZA received evidence from MIB, through and by the undersigned and owner of the business, Ryan Polokoff.

8. On August 1, 2022, the BZA heard testimony from one of MIB’s suppliers, and several remonstrators.

9. Prior to the meeting on August 1, 2022, the BZA was presented with a packet of information from the City of Noblesville, many pages of letters of support and remonstrance, and MIB’s appeal, including a narrative statement providing case law supporting MIB’s position.

10. While the remonstrators stated that they did not like that MIB operates in its location, or how MIB advertises, neither the City nor the remonstrators presented evidence to support the Determination that MIB is a sex shop, nor that it sells products that are designed as representations of human genital organs or female breasts, or designed or marketed primarily for the use to stimulate human genital organs, the BZA upheld the Determination and deemed MIB a sex shop.

11. The BZA issued a letter for its findings of August 1, 2022, it is attached hereto and incorporated herein as Exhibit “B”.

12. MIB is seeking an appeal of the BZA’s decision as it is arbitrary, capricious, an abuse of discretion, government overreach, and not in accordance with law. MIB argues that the BZA exceeded its authority, and its decision is unsupported by substantial evidence.

13. MIB is also appealing the BZA's decision as it is based upon an infringement of MIB's and its members' freedom of speech as provided by the United States Constitution.

14. While the appeal is pending, MIB requests that this Court Stay any proceedings or attempts at enforcing the repercussions of the August 1, 2022 BZA decision, which would shut down MIB.

15. MIB would suffer irreparable harm for the loss of revenue, loss of employees, and other pecuniary losses, if the enforcement of the BZA decision is permitted while its appeal is pending.

16. MIB is prepared to post a cash bond in the statutory amount of five hundred dollars (\$500) upon the issuance of this Court's Order for Stay.

17. MIB understands that a stay of any enforcement proceedings does not guarantee the success of its appeal.

18. MIB also understands that should its appeal fail it is responsible for court costs and required to abide by the BZA's decision.

WHEREFORE, MIB, LLC, by counsel, requests a Stay of any enforcement action or other proceedings that would occur following the BZA's decision of August 1, 2022, pending the conclusion of its appeal, and for all other remedies due and just in the premises.

I AFFIRM UNDER THE PENALTIES FOR PERJURY, THAT THE FOREGOING REPRESENTATIONS ARE TRUE.

Ryan Polokoff

Ryan Polokoff

MIB, LLC

Respectfully submitted,

:/s/ Silvia B. Miller

Silvia B. Miller, #23684-49

CERTIFICATE OF SERVICE

I hereby certify that the above was electronically filed by means of the Court's Electronic Filing System (IEFS) on August 9, 2022.

I further certify that a copy of the foregoing was served upon the following individuals by Courier on the same date of filing:

Mike Field
Chairperson
Noblesville City Hall
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Caleb Gutshall
Director Planning and Development
Noblesville City Hall
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I further certify that a courtesy copy of the foregoing was forwarded to the following counsel:

Jon Hughes – via IEFS and jhughes@boselaw.com

Beth Copeland – via IEFS and BCopeland@taftlaw.com

/s/ Silvia B. Miller

Silvia B. Miller, #23684-49

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