

COUNTY OF



ALLEGHENY

December 6, 2019

VIA INTER-OFFICE MAIL AND EMAIL

Max Slater, Esq.
Administrative Hearing Officer
Allegheny Co. Health Dept.
542 Fourth Avenue
Pittsburgh, PA 15219

RE: Allegheny County Health Department's Position Statement in the Appeal filed by Thai Bellies' Buddy LLC on behalf of Thai and Noodle Outlet (Client # 201903270006).

Dear Hearing Officer Slater:

Pursuant to Allegheny County Health Department ("ACHD" or "Department") Rules and Regulations Article XI, Hearings and Appeals, ("Article XI") § 1105.A.2, the parties in this matter agreed to waive their right to a hearing. Thus, pursuant to Article XI § 1108, the ACHD hereby files this position statement in response to the appeal filed by Thai Bellies' Buddy LLC on behalf of Thai and Noodle Outlet ("Thai and Noodle Outlet" or "Appellant") on May 2, 2019.

Pursuant to Article XI § 1105.C.7.b.i, the party appealing an action of the ACHD shall bear the burden of proof when the ACHD denies a license, permit, approval, or certification. In this case, Thai and Noodle Outlet requested a variance of the customer seating and toilet room requirements in the ACHD Rules and Regulations Article III, Food Safety, ("Article III") §§ 315 and 316.1.C and D. Thai and Noodle Outlet requested 20 patron seats with 4 employees per shift and one toilet room. The ACHD denied the variance request and Mr. Suriyachat Laohapattanalert of Thai and Noodle Outlet appealed. Thus, to prevail in its appeal, Thai and Noodle Outlet must prove by a preponderance of the evidence that the variance request must be granted by the ACHD.

The appeal alleges that the variance must be granted because the previous owner was granted a variance, the name of the facility, menus, and employees remained the same after the change in ownership, the facility is not a fine-dining restaurant and therefore, patrons do not remain in the facility for a long time, and if seating was reduced, then the business would not survive. Thai and Noodle Outlet failed to provide *any* legal support that would direct this tribunal to reverse the ACHD's denial of the variance request.

Based on the discussion below, this tribunal must affirm the ACHD's determination to deny the variance request. First, a variance request is simply a request to the ACHD to deviate from the strict enforcement of a provision in the relevant regulation. Article III § 337.3 conditions



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
542 FOURTH AVENUE • PITTSBURGH, PA 15219
PHONE (412) 687-ACHD (2243) • FAX (412) 578-8325 • WWW.ACHD.NET

a grant of a “variance or conditional variance from any of the requirements of [Article III] if the Director so determines that the granting of such variance poses no real or potential hazard to the health, safety, or welfare of the public.”¹ The regulation does *not require* the Department to grant any variance request of Article III and it places *no* restrictions on the Department when it denies a request. Thai and Noodle Outlet does not point to any authority that grants a food facility the unrestricted right to adopt the variance conditions of a *previous* owner. Thus, the ACHD is *not obligated* to approve Thai and Noodle Outlet’s variance request. Secondly, to reverse the ACHD’s decision would ignore the ACHD’s *discretionary* right to deny variances. In all future cases, the Department would be required to grant variances of its regulations which would not only devalue the purpose of Article III, but would also prevent the Department from slowly bringing all facilities in the county into compliance with Article III.

Although the following has no bearing on the administrative decision and obligations and duties of the ACHD, the Department would like to address statements raised by Thai and Noodle Outlet in its appeal and provide the tribunal with a clear picture of this case. First, Thai and Noodle Outlet omitted the conditions of the variance that was granted to the previous owner of the food facility, Patcharin Boskin. Exhibit “A” is a copy of the variance that was granted to Mr. Boskin on April 4, 2017. The variance for 20 seats with access to one unisex toilet room was granted only if three conditions were met. One of the conditions stated that “Five of the 20 chairs are portable/folding chairs, to be made available only to accommodate a larger party of patrons, and are removed immediately after use.” Moreover, the April 4th letter stated that “This variance is NOT transferrable should the facility change ownership and it is only approved based upon the above conditions. Should the aforementioned conditions change, the variance will become null and void.” Thus, only 15 permanent seats were approved to the previous owner. Secondly, Mr. Laohapattanalert indicated by his signature on the Application for Health Department Permit, dated March 25, 2019, that the facility would have 0 seats. The Application is attached as Exhibit “B”. Finally, in its denial to Mr. Laohapattanalert on April 9, 2019, attached as Exhibit “C”, the Department stated that the denial was specifically for the request to permit 20 patron seats with 4 employees per shift and one toilet room in the basement. The April 9th letter stated that if Mr. Laohapattanalert altered the conditions of his request, such as reducing the total occupancy of the food facility, then he must submit a new written request to be reviewed by the Department.

Consequently, since the Appellant failed to meet its burden of proof by presenting evidence that *requires* the Department to grant its variance request of Article III, the ACHD asserts that the appeal must be dismissed.

¹ As Thai Noodle and Outlet failed to make a claim that it is grandfathered in and therefore not required to comply with the relevant toilet room and customer seating regulations of the Department, the provision in Article III §316.1.C concerning exemption will not be discussed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Vijyalakshmi Patel". The signature is fluid and cursive, with the first name being more prominent.

Vijyalakshmi Patel
ACHD Assistant Solicitor

cc: Donna Scharding, ACHD Food Program Manager (via email)
Suriyachat Laohapattanalert, Appellant (via email)

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

April 04, 2017

Thai Noodle Outlet LLC
c/o Patcharin Boskin
5813 Forbes Avenue
Pittsburgh, PA 15217

RE: Request for Variance
Client #201703090002
Thai Noodle Outlet
5813 Forbes Avenue
- Ward 14

Dear Mr. Boskin:

This letter is in response to your request for a variance from Article III, the Allegheny County Health Department rules and regulations governing "Food Safety", sections 316.1C and D - "Toilet Rooms" and section 315 - "Plumbing." Article III requires for the provision of separate male and female toilet rooms for patrons of food facilities where seating is provided and that such toilet rooms cannot be accessed through food preparation or food storage areas.

Your request for 20 seats with access to only one unisex toilet room is approved and a variance is granted conditioned upon the following:

- There remains at least one unisex toilet room easily accessible to patrons without entrance to any food preparation and storage areas;
- There are no more than 20 seats present at any one time for patrons to consume food on the premises; and
- Five of the 20 chairs are portable/folding chairs, to be made available only to accommodate a larger party of patrons, and are removed immediately after use.

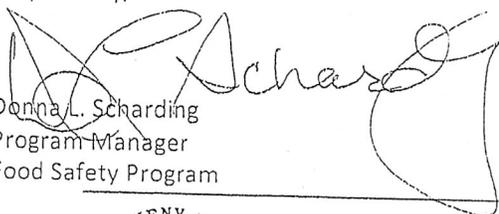
This variance is NOT transferable should the facility change ownership and it is only approved based upon the above conditions. Should the aforementioned conditions change, the variance will become null and void.

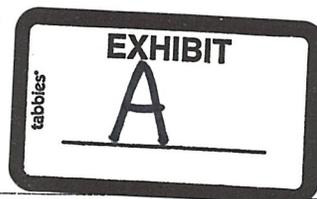
PLEASE RETAIN THIS DOCUMENT AT YOUR FOOD FACILITY FOR REVIEW AT ANY TIME UPON REQUEST.

Article XI, "Hearings and Appeals" provides for your rights to a hearing if aggrieved by this notice. A request for a hearing must be in writing and filed within ten (10) days upon receipt of this notice with the Food Safety Program at the address below.

Feel free to contact me if you have questions.

Respectfully,


Donna L. Scharding
Program Manager
Food Safety Program

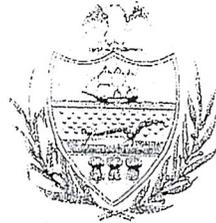


KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

3901 PENN AVENUE • BUILDING 1 • PITTSBURGH, PA 15224-1318
PHONE: 412.578.8044 • FAX: 412.578.8190 • WWW.ACHD.NET

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

April 9, 2019

Thai Bellies' Buddy LLC
c/o Suriyachat Laohapattanaalert
5013 Filmore Avenue, Apt 11
Alexandria, VA 22311

RE: Request for Variance
Client #: Pending
Thai Bellies' Buddy
5813 Forbes Avenue
- Ward 14

Dear Suriyachat Laohapattanaalert:

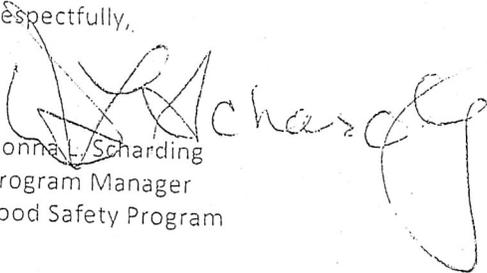
This letter is in response to your request for a variance from Article III, the Allegheny County Health Department rules and regulations governing "Food Safety", sections 316.1C and D - "Toilet Rooms" and section 315 - "Plumbing". Article III requires for the provision of separate male and female toilet rooms for patrons of food facilities where seating is provided and that such toilet rooms cannot be accessed through food preparation or food storage areas.

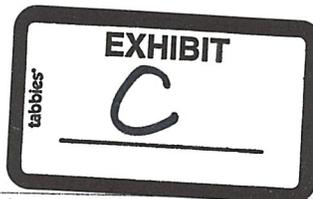
Your request states that you wish to have seats for 20 patrons with 4 employees present per shift. There is only one toilet room available in the basement.

It is the decision of this office to deny your request for a variance. However, this variance denial applies only to the conditions identified in your request for the subject facility. Should you desire to alter the conditions of your request, such as reducing your total occupancy to "15" (number of seats plus number of employees), a new written request is required and may be submitted for review.

Pursuant to Article XI, entitled "Hearings and Appeals", you are hereby notified that you have thirty (30) days after issuance of this notice in which to file a written appeal. The appeal shall be filed in the office of the Director, 542 Fourth Avenue, Pittsburgh, PA 15219. In the event that an appeal is not filed within thirty (30) days after issuance of this order, the within action shall become final.

Respectfully,


Donna Scharding
Program Manager
Food Safety Program



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

3901 PENN AVENUE • BUILDING • PITTSBURGH, PA 15224-1318
PHONE: 412.578.8044 • FAX: 412.578.8190 • WWW.ACHD.NET

