

INDIANA FIRE PREVENTION AND BUILDING SAFETY COMMISSION

Friday, May 21, 2021
By Electronic Mail

Ronnie and Neil McCartney
Petitioners
Maniac Mac's/Mac's Market
2083 Michigan Road
Plymouth, IN 46563
mkn3434@aol.com

John Brooke
Attorney for Petitioners
Brooke Stevens, PC
112 East Gilbert Street
Muncie, IN 47305
jbrooke@brooke-stevens.com

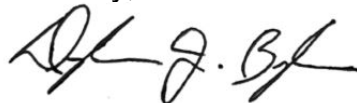
Re: Petition for Administrative Review – IDHS Order of Denial of Certificate of Compliance of Retail Sales of Consumer Fireworks (Consumer Fireworks Retailer Permit) No. FR102310 – Maniac Mac's/Mac's Market

Dear Mr. McCartney and Mr. Brooke:

The Indiana Fire Prevention and Building Safety Commission (Commission) is in receipt of your electronically-filed petition for administrative review of the Indiana Department of Homeland Security's (IDHS) Order of Denial of Certificate of Compliance for Retail Sales of Consumer Fireworks (Consumer Fireworks Retailer Permit) No. FR102310 – Maniac Mac's/Mac's Market, submitted on Thursday, May 20, 2021. Pursuant to the requirements of Indiana Code § 4-21.5-3-7, your petition for administrative review is hereby granted by the Commission.

Your petition will now be forwarded to the Indiana Office on Administrative Law Proceedings (OALP) to be assigned to the Commission's administrative law judge. OALP or the judge will contact you directly to make arrangements for further proceedings. Should you have any questions, you may contact the Indiana Department of Homeland Security's deputy general counsel assigned to this matter, Justin Guedel, at jguedel@dhs.in.gov or (317) 234-9515.

Sincerely,



Douglas J. Boyle, Director
Indiana Fire Prevention and Building Safety Commission

Indiana Department of Homeland Security
Indiana Government Center South, Room E-208
302 W. Washington Street
Indianapolis, IN 46204
doboyle@dhs.in.gov

Enclosure

cc: Justin K. Guedel, IDHS Deputy General Counsel – representing the Respondent
(by electronic mail)
Bryston Sprecher, Administrative Assistant of the Indiana Fire Prevention and
Building Safety Commission (by electronic mail)

From: noreply@formstack.com
To: [DHS Legal Mailbox](#)
Subject: Petition for Review
Date: Thursday, May 20, 2021 3:21:20 PM
Attachments: [68379161_denial_of_application.pdf](#)
[68380022_05202021_Maniac Mac ltr to Guedel and appeal.pdf](#)

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****



Formstack Submission For: [petition for review](#)
Submitted at 05/20/21 3:19 PM

Individual Name:	neil McCartney
Business Name: :	Maniac Mac's/Mac's Market
Phone Number:	(765) 741-1375
Email Address:	mkn3434@aol.com
Mailing Address:	2083 Michigan Raod Plymouth, IN 46563
Are you represented by an attorney?:	Yes
Attorney Name:	John Brooke
Firm:	Brooke Stevens, PC
Phone Number:	7657411375
Email Address:	jbroke@brooke-stevens.com
Mailing Address:	112 east gilbert muncie, IN 47305

Order Number:	
Facility Device Boiler ID:	2083 Michigan Road, Plymouth, IN
Date Order Received:	May 06, 2021
How did you receive the Order? :	Email
Entity Issuing Order:	Other
Entity Name:	State Fire Marshal/Division of Fire and Building Safety-Code enforcement
Upload Order:	View File
Was this order specifically directed to you?:	Yes
Explain:	i applied for a fireworks license to retail consumer and section 8A fireworks. asked for an "unlimited" designation, but was denied improperly
Explain:	
Have you been aggrieved or adversely affected by the order?:	Yes
Explain:	the denial of a B2 unlimited fireworks store is incorrect and now would be limited to just 500 lbs. when fireworks have been sold in the store for more than 20 years
Explain:	
If the order was not specifically directed to you and you have not been aggrieved or adversely affected by the order, are you entitled to review under some other law? :	

What law?:	
I request review of the entire order described above:	Yes
If you are not requesting review of the entire order, what is the scope of your request?:	
I request a stay of effectiveness:	Yes
What is the basis of your challenge? :	the store meets the criteria for a B2 unlimited sale of consumer fireworks as per IC 22-11-14-4.5(b)(1). see correspondence
What is your desired outcome? :	grant status to sell an unlimited quantity of consumer fireworks and section 8a fireworks
Additional information in support of my request:	see letter from Attorney John Brooke
Additional Attachments:	View File
Additional Attachments:	View File
Additional Attachments:	

From: [Boyle, Douglas J \(DHS\)](#)
To: [Settle, Kristin](#); [Sprecher, Bryston](#)
Cc: [Guedel, Justin K](#)
Subject: RE: FR102310
Date: Friday, May 21, 2021 12:27:00 PM
Attachments: [image003.png](#)

Thanks, Kristin.

Based on the date and time that you issued this denial and based on the date and time of the submission for administrative review (yesterday), the petition for administrative review is timely, and I am going to grant it on the Commission's behalf. We will submit the petition for administrative review to the Office of Administrative Law Proceedings (OALP) to be assigned to the administrative law judge (ALJ). Justin will represent the IDHS as counsel for the Respondent in the proceedings.

Douglas J. Boyle

Director of the Indiana Fire Prevention and Building Safety Commission
Indiana Department of Homeland Security
Indiana Government Center South, Room E208
302 W. Washington Street, Indianapolis, IN 46204
Cell: (317) 650-7720

Email: doboyle@dhs.in.gov

[Web](#) | [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)



From: Settle, Kristin <KSettle@dhs.IN.gov>
Sent: Friday, May 21, 2021 11:29 AM
To: Sprecher, Bryston <BSprecher@dhs.IN.gov>
Cc: Boyle, Douglas J (DHS) <DoBoyle@dhs.IN.gov>; Guedel, Justin K <JGuedel@dhs.IN.gov>
Subject: FW: FR102310

Forward of denial email below.

Kristin Settle | CBI | CFI

Section Chief-Code Enforcement
Division of Fire & Building Safety
Indiana Department of Homeland Security
302 W. Washington Street, Room E241
Indianapolis, IN 46204
Phone: 317-431-8359
Email: ksettle@dhs.in.gov
Web: www.in.gov/dhs



From: Settle, Kristin <KSettle@dhs.IN.gov>

Sent: Thursday, May 6, 2021 9:31 AM

To: trey MCCartney4@gmail.com

Subject: FR102310

Good morning,

We have reviewed your permit request for 2083 Michigan Road, Plymouth, IN 46563. Based on the affidavits turned in and the requirements of Indiana Code (IC22-11-14-4.5), this location does not qualify as a B2 unlimited location.

You may reapply as a 'New' location for B4 status with weight limit of 500 pounds or re-assess if your store qualifies under a different designation. I did have a meeting this morning with the Fireworks Association and our legal counsel regarding the affidavits and I would suggest putting a call in to Steve Graves for further guidance on the affidavits and a more appropriate designation/ request for store status.

Thank you,

Kristin Settle | CBI | CFI

Section Chief-Code Enforcement

Division of Fire & Building Safety

Indiana Department of Homeland Security

302 W. Washington Street, Room E241

Indianapolis, IN 46204

Phone: 317-431-8359

Email: ksettle@dhs.in.gov

Web: www.in.gov/dhs



Maniac Mac's Licence Denial

mkn3434@aol.com <mkn3434@aol.com>

Tue 5/11/2021 15:53

To: John Brooke <jbrooke@brooke-stevens.com>

Cc: Neil Mccartney <mkn3434@aol.com>; Indianafireworks777 <indianafireworks777@ifua.org>

9:32



FR102310 Inbox



Settle, Kristin 9:30 AM



to me ▾

Good morning,

We have reviewed your permit request for [2083 Michigan Road, Plymouth, IN 46563](#). Based on the affidavits turned in and the requirements of Indiana Code (IC22-11-14-4.5), this location does not qualify as a B2 unlimited location.

You may reapply as a 'New' location for B4 status with weight limit of 500 pounds or re-assess if your store qualifies under a different

access to your store quarters under a different designation. I did have a meeting this morning with the Fireworks Association and our legal counsel regarding the affidavits and I would suggest putting a call in to Steve Graves for further guidance on the affidavits and a more appropriate designation/ request for store status.

Thank you,

Kristin Settle | CBI | CFI

Section Chief-Code Enforcement

Division of Fire & Building Safety

[Sent from the all new AOL app for Android](#)



May 20, 2021

Joseph I. Rhett

Danyel N. Struble

Stephanie L. Hoover

Mr. Justin Guedel
Staff Attorney
Indiana Department of Homeland Security
302 W. Washington St., Room E208
Indianapolis, IN 46204

Re: Fireworks Retailer: Maniac Mac's/Mac's Market
Address: 2083 Michigan Road, Plymouth, IN 46563
County: Marshall

Dear Mr. Guedel:

I have been contacted by Ronnie and Neil McCartney (father and son), owners of "Maniac Mac's/Mac's Market" with respect to their license to sell, at retail, consumer and section 8A firework from the above stated location in Marshall County, Indiana. This location is near LaPaz, IN in Marshall County. I am also attaching revised affidavits of the McCartneys as well as Mathew Haskins, the LaPaz Fire Chief attesting to fireworks sales in this location prior to July 4, 2003 and no change of occupancy or change of use in the facility in the intervening years. The fireworks store is owned by Trey McCartney, grandson and son of the owners.

I also have been provided with a copy of an email denying their use of the facility as a "B2 unlimited location" dated May 6, 2021 from Kristen Settles. This may have had to do with the affidavits originally provided which my client admits was in error. They were uncertain as to the law and how to answer the affidavits to reflect the actual situation with this building. Therefore, after consultation with this office, the revised affidavits are being submitted to support their request for a "B2 unlimited location" designation for this address.

Pursuant to I. C. 22-14-4-4.5(b)(1) a structure that sold consumer and section 8(a) fireworks prior to July 4, 2003 and met the rules for a building occupancy of "B2" or "M" would be permitted to continue to sell consumer and section 8(a) fireworks in the future provided that there had been no subsequent intervening non-fireworks sales or storage. The fact that the building may have been unused is not addressed in the statute nor is the State Fire Marshal's position that "Any period of non-fireworks sale or storage after July 4, 2003, results in disqualification from this designation" supported by the law or prior actions of the office. The statute cited does not grant to the State Fire Marshal this "interpretation". Additionally, the State Fire Marshal has granted this "B2 unlimited location" status to buildings in that had been empty for a few years so long as fireworks had been sold prior to July 4, 2003 and there was no actual intervening use of the building for some other activity outside of fireworks sales. This building qualifies as such because the property has been in the McCartney family for multiple generations and they have had exclusive control over the property and its use.


Mr. Justin Guedel
Staff Attorney
May 20, 2021
Page two

In their affidavit the McCartney's as well as the LaPaz Fire Official affirmatively state that the building complies with the law at the time when it was built. They are not certifying that they had a certificate of compliance in the past, but prior to 2006, a certificate of compliance was not required for fireworks sales in Indiana if they were selling fireworks for public displays or were selling fireworks for another wholesaler.

Therefore, pursuant to the statute and the intent of the Legislature, this property should be considered to be a "B2 unlimited location" unless the State Fire Marshal's office has some records or evidence to contradict this assertion. Given representations made by the State Fire Marshal's office in cases in 2008 and 2009, the record keeping from 2003 and before was less than complete or available.

If this request is not granted then please consider this letter to be a formal appeal of the denial of the request for a "B2 unlimited location" for the address located at 2083 Michigan Road, Plymouth, Marshall County, IN.

Very Truly Yours,
Brooke Stevens, PC



By: John H. Brooke

cc: Ronnie and Neil McCartney d/b/a Maniac Mac's/Mac's Market

AFFIDAVIT
RETAIL SALE OF CONSUMER FIREWORKS FROM A STRUCTURE IDENTIFIED IN
IC 22-11-14-4.5(b)(1); IC 22-11-14-4.5(b)(2); OR IC 22-11-14-4.5(c); OR
FROM A TENT UNDER SECTION IC 22-11-14-4.5(a)

1. RETAIL SALES LOCATION-The consumer fireworks will be sold from the following retail sales location:

Retail Sales Location Name: Momiac Mac's / Mac's Market
 Street Address: 2083 Michigan Rd
 County: Marshall City: Plymouth Zip Code: 46563

2. RETAIL SALES FROM A TENT (IC 22-11-14-4.5(a))

The above-identified retail sales location is a tent that meets the following requirements:

- (1) The tent may not be larger than one thousand five hundred (1,500) square feet.
- (2) The tent may not be located closer than one hundred (100) feet from a permanent structure.
- (4) A vehicle may not be parked closer than twenty (20) feet from the edge of the tent.
- (5) The tent must be fire retardant.
- (6) The sales site must comply with all applicable local zoning and land use rules.
- (7) Sales of fireworks may be made from the tent for not more than forty-five (45) days in a year.
- (8) The weight of consumer fireworks in a tent may not exceed three thousand (3,000) gross pounds of consumer fireworks.
- (9) The retailer legally operated the tent with a registration authorizing the sale of fireworks in 2005. For purposes of this provision, a retailer includes a resident wholesaler who supplied consumer fireworks to an applicant for a tent registration in 2005.

Yes No

3. RETAIL SALES FROM A STRUCTURE IDENTIFIED IN IC 22-11-14-4.5(b)(1)

The above-identified retail sales location is a Class 1 structure (as defined in IC 22-12-1-4) which complied with the rules for a B-2 or building occupancy classification before July 4, 2003, under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1:

- (A) in which consumer fireworks were sold or stored on or before July 4, 2003; and
- (B) in which no subsequent intervening nonfireworks sales or storage use has occurred.

Yes No

4. RETAIL SALES FROM A STRUCTURE IDENTIFIED IN IC 22-11-14-4.5(b)(2)

The above-identified retail sales location is a Class 1 structure (as defined in IC 22-12-1-4) which complied with the rules for a B-2 or building occupancy classification before July 4, 2003, under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1;

- (A) in which consumer fireworks were sold or stored on or before July 4, 2003;
- (B) in a location at which the retailer was registered as a resident wholesaler in 2005; and
- (C) in which the retailer's primary business is not the sale of consumer fireworks.

Yes No

5. RETAIL SALES FROM A STRUCTURE IDENTIFIED IN IC 22-11-14-4.5(c)

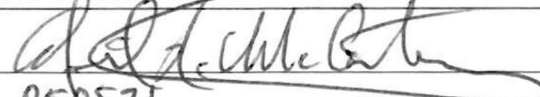
The above-identified retail sales location is not a structure identified in IC 22-11-14-4.5(b)(1), IC 22-11-14-4.5(b)(2), IC 22-11-14-4.5(b)(3), or IC 22-11-14-4.5(b)(4) and the following conditions are met:

- (1) The structure must be a Class 1 structure (as defined in IC 22-12-1-4) in which consumer fireworks are sold and stored.
- (2) The sales site must comply with all applicable local zoning and land use rules.
- (3) The weight of consumer fireworks in the structure may not exceed three thousand (3,000) gross pounds of consumer fireworks.
- (4) The retailer sold consumer fireworks from this location in 2005 and the retailer was registered to sell fireworks at this location in 2005.

Yes No

6. SIGNATURE AND CERTIFICATION

UNDER PENALTY OF PERJURY, THE UNDERSIGNED HEREBY CERTIFIES THAT HE OR SHE IS A RESPONSIBLE PARTY WITH PERSONAL KNOWLEDGE IN REGARDS TO THE FOREGOING STATEMENTS AND THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT:

Signature:  Printed Name: Neil K. McCartney
 Date: 050521 Title: Owner MM

AFFIDAVIT
RETAIL SALE OF CONSUMER FIREWORKS FROM A STRUCTURE IDENTIFIED IN
IC 22-11-14-4.5(b)(1); IC 22-11-14-4.5(b)(2); OR IC 22-11-14-4.5(c); OR
FROM A TENT UNDER SECTION IC 22-11-14-4.5(a)

1. RETAIL SALES LOCATION-The consumer fireworks will be sold from the following retail sales location:

Retail Sales Location Name: Mamie Mac's / Mac's Market
 Street Address: 2083 Michigan Rd
 County: Marshall City: Plymouth Zip Code: 46563

2. RETAIL SALES FROM A TENT (IC 22-11-14-4.5(a))

The above-identified retail sales location is a tent that meets the following requirements:
 (1) The tent may not be larger than one thousand five hundred (1,500) square feet.
 (2) The tent may not be located closer than one hundred (100) feet from a permanent structure.
 (4) A vehicle may not be parked closer than twenty (20) feet from the edge of the tent.
 (5) The tent must be fire retardant.
 (6) The sales site must comply with all applicable local zoning and land use rules.
 (7) Sales of fireworks may be made from the tent for not more than forty-five (45) days in a year.
 (8) The weight of consumer fireworks in a tent may not exceed three thousand (3,000) gross pounds of consumer fireworks.
 (9) The retailer legally operated the tent with a registration authorizing the sale of fireworks in 2005. For purposes of this provision, a retailer includes a resident wholesaler who supplied consumer fireworks to an applicant for a tent registration in 2005.

Yes No

3. RETAIL SALES FROM A STRUCTURE IDENTIFIED IN IC 22-11-14-4.5(b)(1)

The above-identified retail sales location is a Class 1 structure (as defined in IC 22-12-1-4) which complied with the rules for a B-2 occupancy classification before July 4, 2003, under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1:
 (A) in which consumer fireworks were sold or stored on or before July 4, 2003; and
 (B) in which no subsequent intervening nonfireworks sales or storage use has occurred.

Yes No

4. RETAIL SALES FROM A STRUCTURE IDENTIFIED IN IC 22-11-14-4.5(b)(2)

The above-identified retail sales location is a Class 1 structure (as defined in IC 22-12-1-4) which complied with the rules for a B-2 occupancy classification before July 4, 2003, under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1;
 (A) in which consumer fireworks were sold or stored on or before July 4, 2003;
 (B) in a location at which the retailer was registered as a resident wholesaler in 2005; and
 (C) in which the retailer's primary business is not the sale of consumer fireworks.

Yes No


5. RETAIL SALES FROM A STRUCTURE IDENTIFIED IN IC 22-11-14-4.5(c)

The above-identified retail sales location is not a structure identified in IC 22-11-14-4.5(b)(1), IC 22-11-14-4.5(b)(2), IC 22-11-14-4.5(b)(3), or IC 22-11-14-4.5(b)(4) and the following conditions are met:
 (1) The structure must be a Class 1 structure (as defined in IC 22-12-1-4) in which consumer fireworks are sold and stored.
 (2) The sales site must comply with all applicable local zoning and land use rules.
 (3) The weight of consumer fireworks in the structure may not exceed three thousand (3,000) gross pounds of consumer fireworks.
 (4) The retailer sold consumer fireworks from this location in 2005 and the retailer was registered to sell fireworks at this location in 2005.

Yes No

6. SIGNATURE AND CERTIFICATION

UNDER PENALTY OF PERJURY, THE UNDERSIGNED HEREBY CERTIFIES THAT HE OR SHE IS A RESPONSIBLE PARTY WITH PERSONAL KNOWLEDGE IN REGARDS TO THE FOREGOING STATEMENTS AND THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT:

Signature:  Printed Name Matthew Hasler
 Date: 4-28-21 Title: Lopez Fire Dept.

AFFIDAVIT
RETAIL SALE OF CONSUMER FIREWORKS FROM A STRUCTURE IDENTIFIED IN
IC 22-11-14-4.5(b)(1); IC 22-11-14-4.5(b)(2); OR IC 22-11-14-4.5(c); OR
FROM A TENT UNDER SECTION IC 22-11-14-4.5(a)

1. RETAIL SALES LOCATION-The consumer fireworks will be sold from the following retail sales location:		
Retail Sales Location Name: <u>Maniac Mac's / Mac's Market</u>		
Street Address: <u>2083 Michigan Rd</u>		
County: <u>Marshall</u>	City: <u>Plymouth</u>	Zip Code: <u>46563</u>
2. RETAIL SALES FROM A TENT (IC 22-11-14-4.5(a))		
The above-identified retail sales location is a tent that meets the following requirements:		
(1) The tent may not be larger than one thousand five hundred (1,500) square feet.		
(2) The tent may not be located closer than one hundred (100) feet from a permanent structure.		
(4) A vehicle may not be parked closer than twenty (20) feet from the edge of the tent.		
(5) The tent must be fire retardant.		
(6) The sales site must comply with all applicable local zoning and land use rules.		
(7) Sales of fireworks may be made from the tent for not more than forty-five (45) days in a year.		
(8) The weight of consumer fireworks in a tent may not exceed three thousand (3,000) gross pounds of consumer fireworks.		
(9) The retailer legally operated the tent with a registration authorizing the sale of fireworks in 2005. For purposes of this provision, a retailer includes a resident wholesaler who supplied consumer fireworks to an applicant for a tent registration in 2005.		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
3. RETAIL SALES FROM A STRUCTURE IDENTIFIED IN IC 22-11-14-4.5(b)(1)		
The above-identified retail sales location is a Class 1 structure (as defined in IC 22-12-1-4) which complied with the rules for a B-2 occupancy classification before July 4, 2003, under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1:		
(A) in which consumer fireworks were sold or stored on or before July 4, 2003; and		
(B) in which no subsequent intervening nonfireworks sales or storage use has occurred.		
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
4. RETAIL SALES FROM A STRUCTURE IDENTIFIED IN IC 22-11-14-4.5(b)(2)		
The above-identified retail sales location is a Class 1 structure (as defined in IC 22-12-1-4) which complied with the rules for a B-2 occupancy classification before July 4, 2003, under the Indiana building code adopted by the fire prevention and building safety commission established under IC 22-12-2-1;		
(A) in which consumer fireworks were sold or stored on or before July 4, 2003;		
(B) in a location at which the retailer was registered as a resident wholesaler in 2005; and		
(C) in which the retailer's primary business is not the sale of consumer fireworks.		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
5. RETAIL SALES FROM A STRUCTURE IDENTIFIED IN IC 22-11-14-4.5(c)		
The above-identified retail sales location is not a structure identified in IC 22-11-14-4.5(b)(1), IC 22-11-14-4.5(b)(2), IC 22-11-14-4.5(b)(3), or IC 22-11-14-4.5(b)(4) and the following conditions are met:		
(1) The structure must be a Class 1 structure (as defined in IC 22-12-1-4) in which consumer fireworks are sold and stored.		
(2) The sales site must comply with all applicable local zoning and land use rules.		
(3) The weight of consumer fireworks in the structure may not exceed three thousand (3,000) gross pounds of consumer fireworks.		
(4) The retailer sold consumer fireworks from this location in 2005 and the retailer was registered to sell fireworks at this location in 2005.		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
6. SIGNATURE AND CERTIFICATION		
UNDER PENALTY OF PERJURY, THE UNDERSIGNED HEREBY CERTIFIES THAT HE OR SHE IS A RESPONSIBLE PARTY WITH PERSONAL KNOWLEDGE IN REGARDS TO THE FOREGOING STATEMENTS AND THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT:		
Signature: <u>Ronnie R. McCartney</u>	Printed Name: <u>Ronnie R. McCartney</u>	
Date: <u>4/21/21</u>	Title: <u>Owner Mac's Market</u>	