



October 17, 2019
By Electronic Mail and U.S. Postal Mail

Bobby Hensley
Blue Olive Café
PO Box 35
113 W. Carr Street
Milan, IN 47031
oliveyouinmilan@gmail.com

Re: Petition for Administrative Review – IDHS Civil Penalty Order Number BU30415_10022019 – Blue Olive Café

Dear Mr. Hensley:

The Fire Prevention and Building Safety Commission is in receipt of your petition for administrative review of IDHS Civil Penalty Order Number BU30415_10022019 – Blue Olive Café, dated 10/6/2019. The petition for review is timely and has been granted by the Commission. The petition has been assigned to the Commission's administrative law judge.

The judge's office will contact you to make arrangements for further proceedings. Should you have any questions, you may contact our deputy general counsel assigned to the matter, Justin Guedel at jguedel@dhs.in.gov or (317) 234-9515.

Sincerely,

A handwritten signature in black ink, appearing to read "D. J. Boyle", is positioned above the typed name of the Director.

Douglas J. Boyle, Director
Fire Prevention and Building Safety Commission
Indiana Department of Homeland Security
302 W. Washington Street, Room E-208
Indianapolis, IN 46204
dboyle@dhs.in.gov
(317) 650-7720

Enclosure

cc: Justin Guedel, IDHS Deputy General Counsel – representing the respondent (by personal service and electronic mail)
Office of Attorney General Curtis Hill – Administrative Law Judge (by electronic mail)
File

From: [Guedel, Justin K](#)
To: [Boyle, Douglas J \(DHS\)](#)
Subject: FW: petition for review
Date: Monday, October 7, 2019 12:49:49 PM

Justin K. Guedel | Deputy General Counsel
Indiana Department of Homeland Security
302 W. Washington Street, Rm. E208
Indianapolis, IN 46204
(317) 234-9515
JGuedel@dhs.IN.gov

From: DHS Legal Mailbox
Sent: Monday, October 07, 2019 12:27 PM
To: Guedel, Justin K <JGuedel@dhs.IN.gov>
Subject: FW: petition for review

Justin K. Guedel | Deputy General Counsel
Indiana Department of Homeland Security
302 W. Washington Street, Rm. E208
Indianapolis, IN 46204
(317) 234-9515
JGuedel@dhs.IN.gov

From: Olive Milan [<mailto:oliveyouinmilan@gmail.com>]
Sent: Monday, October 07, 2019 12:14 PM
To: DHS Legal Mailbox <Legal@dhs.IN.gov>
Subject: Re: petition for review

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

To whom it may Concern,

Last night, this appeal was filed with legal. In review, it appears that some of the drop down selections, changed themselves and it is important that this appeal be directed to the Indiana Department of Homeland Security and not Regulated Amusement Device Safety Board. Please confirm that this change is made promptly.

Thank you,

Bobby Hensley

On Sun, Oct 6, 2019 at 9:50 PM legal@dhs.in.gov
<noreply+eb8b5b61c04b218c@formstack.com> wrote:

Formstack Submission For: petition for review

Submitted at 10/06/19 9:50 PM

Individual Name: Bobby Hansley

Business Name : Blue Olive Cafe

Phone Number: (812) 584-2658

Email Address: OliveYouInMilan@gmail.com

Mailing Address: PO Box 35
113 W Carr Street
Milan, IN 47031

Are you represented by an attorney?: No

Attorney Name:

Firm:

Phone Number:

Email Address:

Mailing Address:

Order

Number:

**Facility |
Device |
Boiler ID:**

**Date Order
Received:** Oct 02, 2019

**How did you
receive the
Order? :** Hand Delivery

**Entity
Issuing
Order:** Regulated Amusement Device Safety Board

Entity Name:

**Upload
Order:** [View File](#)

**Was this
order
specifically
directed to
you?:** Yes

Explain:

Walt Knaepple and Randall Cooley came to our place of business on 10/02/19 and issued me a fine for \$2000 which is \$333.33 per fine; \$83.33 more than allowable amount. During Walter's first appearance with D. Millhoan DFBS, he was rude. I asked them if I could help them and Walt said, "We are here because you opened up a restaurant without permits." Neither showed identification, but rather handed me a business card. He didn't know the legal owner of the building, nor the business, but continued to scribe his report under my misspelled name. He didn't even know the address of the premises. I am not the legal owner and I should therefore not be sanctioned or fined. I don't appreciate my or my wife being bullied or embarrassed in front of clients. We are told that they are here to help us get into compliance, but we experience something way different. We have been misled on our need to file for differing occupancies, on timelines to file petitions, and on rules for varying occupancies. We missed the deadline to file a petition on the violations for this reason and for not paying enough attention to the wording on the last page of the order. The order is extremely difficult to understand, is contradictory on information, and has incorrect

information. This is the first time that I have undergone such scrutiny with a governmental agency and it has not been a pleasant one. I have learned from this whole process, but I still am not the legal person to be charged. Therefore, this order should be thrown out in its entirety.

Have you been aggrieved or adversely affected by the order?:

Yes

Explain:

They issued the fines, 11 days before the date that corrections were to be completed, according to the Order on 8/28/19. The cafe must now shut down and our business will be in jeopardy of never having the momentum of a start up business again. We risk our entire investment, because of your unwillingness to cooperate and bullying, militant like authority. We will be shutting down on 10/13.19, unless we receive an acceptable resolve in writing, by the order deadline of 10/13/19.

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

We request that this entire order and civil penalty be null and

If you are not requesting review of the entire order, what is the scope of your request?:

voided. If we are not in compliance with the occupancy status M, then please ask for the occupancy change to be applied for by the appropriate person(s). As such, we will then make the necessary changes to the building to be in compliance with the new occupancy applied for. It is the desire of the owner to continue to remain a retail establishment, with the ability to sell both retail and wholesale merchandise. We would still like to work cooperatively with the inspectors to agree on what occupancy best suits our needs and more importantly, the needs of the community. We find that there are multiple occupancy crossovers that confuse the rules by which must be followed.

I request a stay of effectiveness:

Yes

What is the basis of your challenge? :

Yes, until charges are dropped and we work toward a solution that is good for all.

What is your desired outcome? :

1. Keep our community, our staff, and ourselves safe.
2. Work in cooperation, instead of in dread and fear, in a timely, efficient, and cost effective manner.
3. Be able to provide a much need small business and opportunity to a downtown district small town that died a long time ago.
4. To become compliant throughout the entire building.
5. To be able to be profitable and still maintain an old historical building that was home to the Odd Fellow Fraternity and other historical significance.
6. To offer the traveling public a new experience, right next door to the Milan '54 Hoosier Basketball Museum, that could possibly become and Indiana travelers destination.
7. Drop all sanctions and civil penalties.

Additional information in support of my request:

A Request for an informal hearing was applied for online on September 24, 2019. A copy was sent by email to Mr. Knaepple. Not sure what the outcome or procedure is to this submission.

Additional Attachments:

[View File](#)

Additional Attachments:

Additional Attachments:

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038



CIVIL PENALTY

TO: Bobby Hansley
113 W Carr St, Milan IN 47031
BU30415

DATE: 10/02/2019

ORDER #: BU30415 10022019

Pursuant to Indiana Code § 4-21.5-3-6 and Indiana Code § 22-12-7-7, the Division of Fire and Building Safety of the Indiana Department of Homeland Security (the "Division") issues this Order imposing \$ 2000.00 fine for failing to correct all violations of the Indiana building and fire safety laws found during an inspection conducted at your facility. A copy of the inspection report order that was issued following this inspection has been attached to this Order for your reference.

Specifically, the following violations you were required to correct still remain uncorrected:

675 IAC 12-4-11(b)

No change in the character or use of any building or structure shall be permitted that shall cause the building or structure to be classified within a different occupancy group or within a different division of the same occupancy group, unless the building or structure complies with, or is made to comply with the:

- (1) current rules of the commission for new construction for the proposed revised use of the building; or
- (2) provisions of:
 - (A) Chapter 34 of the Indiana Building Code (675 IAC 13-2.5-32); or
 - (B) 675 IAC 12-13.

- Building has been changed from M occupancy group to A-2 occupancy group.

675 IAC 13-2.6 Sec. 903.2.1.2

An automatic sprinkler system shall be provided for Group A-2 occupancies where one of the following conditions exists:

1. The fire area exceeds 5,000 square feet (464.5 m²);
 2. The fire area has an occupant load of 100 or more; or
 3. The fire area is located on a floor other than a level of discharge
- The Café portion of the building has an occupant load of over 100.

Sec. 507.2 2014 Edition IMC 675 IAC 18-1.6

A Type I or Type II hood shall be installed at or above all commercial cooking appliances in accordance with Sections 507.2.1 and 507.2.2 and Table 507.2. Where any cooking appliance under a single hood requires a Type I hood, a Type I hood shall be installed. Where a Type II hood is required, a Type I or Type II hood shall be installed.

Exception: Where cooking appliances are equipped with integral down-draft exhaust systems and such appliances and exhaust systems are listed and labeled for the application in accordance with NFPA 96, a hood shall not be required at or above them.

- There are 2 stoves in the facility 1 in the kitchen and 1 in the lounge. Neither stove has a hood. ** Please note that the type of hood must match the by product of cooking ** refer to Chapter 5 of the 2014 issue of the Indiana Mechanical Code (675 IAC 18-1.6).

Sec. 1006.1 2014 Edition IFC 675 IAC 22-2.

The means of egress, including the exit discharge, shall be illuminated at all times the building space served by the means of egress is occupied.

Exceptions:

1. Occupancies in Group U.
2. Aisle accessways in Group A.
3. Dwelling units and sleeping units in Groups R-1, R-2 and R-3.
4. Sleeping units of Group I occupancies
 - There is no emergency lighting installed.

2014 Edition IBC 675 IAC 13-2.6

508.4.4 Separation. Individual occupancies shall be separated from adjacent occupancies in accordance with Table 508.4.

- Table 508.4 requires 2 hour separation between A and R occupancies in non sprinklered structures. Provide documentation for the separation rating of the floor ceiling assembly between the café and the residential units above.

Sec. 1008.1.2 2014 Edition IFC 675 IAC 22-2.5

Egress doors shall be of the pivoted or side-hinged swinging type.

Exceptions:

1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
2. Group I-3 occupancies used as a place of detention.
3. Critical or intensive care patient rooms within suites of health care facilities.

4. Doors within or serving a single dwelling unit in Groups R-2 and R- 3.
 5. In other than Group H occupancies, revolving doors complying with Section 1008.1.4.1.
 6. In other than Group H occupancies, horizontal sliding doors complying with Section 1008.1.4.3 are permitted in a means of egress.
 7. Power-operated doors in accordance with Section 1008.1.4.2.
 8. Doors serving a bathroom within an individual sleeping unit in Group R-1.
 9. In other than Group H occupancies, manually operated horizontal sliding doors are permitted in a means of egress from spaces with an occupant load of 10 or less.
- Doors shall swing in the direction of egress travel where serving a room or area containing an occupant load of 50 or more persons or a Group H occupancy.

- The existing locks on the doors are not panic.

Please notify the Division immediately upon your compliance with the requirements of this Order. Failure to correct the above mentioned violations and remit payment in full for the fine that has been issued will result in additional sanctions and enforcement actions.

Payments may be made by:

1. Certified Check or Money Order; or

Made out to the Indiana Department of Homeland Security and delivered to:
Indiana Department of Homeland Security
Division of Fire and Building Safety, Code Enforcement
302 W. Washington St. Rm. E241
Indianapolis, IN 46204

2. Credit Card

By following the directions at the following link: <https://oas.dhs.in.gov/dfbs/idhsFeesFines/start.do>.

REVIEW RIGHTS

This order is final and effective **fifteen (15) days after service**. If you would like to request **informal review** of this order, please complete the informal review form located at <https://www.in.gov/dhs/appeals>. Following receipt of this form, the Department may modify or reverse the order, however, a request for an informal review does not extend the deadline for filing a petition for review. Additionally, if you have any questions regarding this order, you may contact that Department at (317) 232-2222.

If you desire a formal administrative review of this order, you must comply with the requirements of Indiana Code § 4-21.5-3-7 and file a written petition for review within **fifteen (15) days** after receiving notice of this order. Your petition for review must state facts demonstrating that you are: (1) a person to whom the order is specifically

directed; (2) aggrieved or adversely affected by the order; or (3) entitled to review under any law. You may submit your petition by the following methods:

U.S. MAIL OR PERSONAL SERVICE

Indiana Department of Homeland Security
Fire Prevention and Building Safety Commission
c/o Legal Counsel
302 W. Washington Street, Rm. E208
Indianapolis, IN 46204

ONLINE

By completing the form at
<https://www.in.gov/dhs/appeals.htm>

For additional information about the administrative review process and applicable templates that may be used for filings, visit the following link <https://www.in.gov/dhs/appeals.htm>.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Findings and Order has been served this 2nd day of October 2019, via hand delivery upon the following:

**Bobby Hansley
113 W Carr St,
Milan IN 47031**

Signature
Indiana State Fire Marshal (or designee)

Received this 2nd day of October, 2019

Signature (owner)

Received this ____ day of _____, 201__

Signature (occupant/tenant if applicable)

September 24, 2019

Re: BU30415

To: <https://www.in.gov/khs/appeals.htm>

wknaepple@dhs.in.gov

Proposed Violation 1: Charge states that Indiana Code 675-IAC 12-4-11(b) Building has been changed from M occupancy group to A-2 occupancy group.

Rebuttal:

M occupancy group=Merchantile

A-2 occupancy group= Assembly

The building status has NOT been changed. The current M status of the building remains. It may still be used in the capacity for merchantile as it has for its entire lifetime. We do not intend on giving up that status as we have plans to still utilize the building in a merchantile capacity. The inspector feels that the most current use falls under the A-2 Occupany status. Therefore, the owners must now add the A-2 occupancy status to the list of occupancy statuses allowed for the building.

(Sec. 11. (a) Any building or structure lawfully in existence at the time of the adoption of any rule of the commission for new construction may have its existing use or occupancy continued without having to be altered to comply with such a rule.)

675 IAC 12-13. Exception: Buildings constructed before the April 30, 1998, effective date of the 1998 Indiana Building Code (675 IAC 13-2.3) that change occupancy classification shall not be considered as a change in occupancy as outlined as follows:

Previous Classification 1998 IBC Classification B-1 S-3 B-2 B, F-1, M, S-1, and S-2 B-3 S-4 and S-5 B-4 F-2 and S-2 Open Parking Garage S-4 M U Any Class 1 structure that complied with the rules for a "Previous Classification" may be used for any of the occupancy classifications listed under the "1998 IBC Classification" column heading directly opposite the column heading of "Previous Classification" in the preceding chart, provided that the "Previous Classification" was the classification for which the Class 1 structure was originally constructed and all subsequent classifications have been within any of the occupancy classifications listed under the "1998 IBC Classification" directly opposite the "Previous Classification" in the preceding chart. Any owner or occupant of a Class 1 structure for which an occupancy classification is changed in accordance with this section shall provide written verification of the past occupancies of such Class 1 structure.

The use of the building is very much in compliance with its intended purpose, which is to explore the possibility of maintaining a simple profitable coffee shop/merchantile retail establishment. The

violation does not specify how the building complies or fails to comply with any current rules for the building use. The building has not been changed, rather it is just currently being utilized differently than in the past, because coffee is now being served in this establishment. The violation does not specifically identify how the current USE is not acceptable under the M status. Should the current business fail in a short amount of time, the use will remain as an M occupancy group, apparently for which it was designed. The owners do not wish to relinquish such M status, as it may be economically devastating to future investment opportunities for which the building was purchased.

Proposed Violation 2: Charge: 675 IAC 13-2.6: The café portion of the building has an occupant load of over 100. The entire building exceeds 5000 square feet.

Rebuttal: The coffee shop has a seating area of less than 1500 square feet. It measures 1489 ‘.

Proposed Violation 3: Charge: 675 IAC18-1.6: There are two stoves in the facility, one in the kitchen and one in the lounge. Neither stove has a hood.

Rebuttal: The cook stove in the lounge, nor the stove in the kitchen area were designed for heavy volume commercial applications. Both are residential style stoves. The stove in the lounge has not been approved by the health department nor is it operational. Hence, it is only taking up a void space in the cabinetry. The stove in the kitchen, at the time of the inspection, was not operational and was still on pallets. It is now being utilized and it is believed that it would not qualify as a “commercial” hood operation since we are only a coffee shop, that makes the occasional soup or pasta boiled dishes on occasion.

[507.2.1 requires a Type I hood over light-duty cooking appliances and medium-duty cooking appliances that produce grease or smoke. Therefore, if smoke or grease from animal or plant oils is produced during cooking with this appliance, a Type I hood is required. 507.2.2]

Currently, the owners see that an occasional use of cooking of animal products may be necessary in the production of certain soups. As such, they are currently seeking a 48” exhaust hood. This will require 6 months or more to comply with this charge, depending on funds availability and cost of the hood.

Proposed Violation 4: Charge: 675-IAC 17-1.8. Extension cords are in use for appliances.

Rebuttal: There was an extension cord affixed to the new television for testing purposes at the time of this inspection. A receptacle has since been installed to remedy this finding. Not sure if others were identified.

Proposed Violation 5: Charge: 675-IAC22-2.5. The occupancy load exceeds 50 as required in T1015.1.

Remedy: The intent of this charge is not fully understood. This proposed violation, may be in reference to the number of exits required for the occupancy of the building. If so, the coffee shop has ample exit doors already in existence or having the potential to be opened and used for egress. Currently, three readily accessible exits are available for use by coffee shop clients.

Proposed Violation 6: Charge: There (are) is no exit signs installed at the front door.

Remedy: This is being resolved. Exit signs have been installed at all exits as required. Testing is in progress. Completion is scheduled for the 15th of October.

Proposed Violation 7: Charge: Interior signage identifying the egress path is non-existent.

Remedy: Safety of our clients and of ourselves are top priorities. We are seeking the assistance of the local fire department to assist in our continuous improvement efforts. Maps/diagrams are worthwhile and more time is needed in order to put these items in place. These maps shall be in place by October 15th.

Proposed Violation 8: Charge: 675 IAC 22-2.5: The means of egress, including the exit discharge, shall be illuminated at all times the building space served by the means of egress is occupied.

Remedy: Battery operated exit signage and emergency lighting is being installed in the café at the front and side exits. Testing is in progress.

Proposed Violation 9: Charge: 675 IAC 13-2.6: This rule applies to a 2 hour separation between A and R occupancies in a non-sprinkler constructed structure.

Remedy: Documentation is attached to show that this rule has been previously complied with by former owners to occupy a residence above a business, requiring the 2 hour burn-through as a condition of occupancy.

Proposed Violation 10: Charge: 675 IAC 22-2.5: Egress doors swing in the wrong direction. This rule is for occupancies of 50 or more persons.

Remedy: The Blue Olive has yet to see more than 30 occupants at a time inside of the building. The owners' intent is to replace the front door and as such, it will comply with the current rule. It will require time and money to satisfy this charge. We are currently seeking a bid from Aurora All About Doors for a cost estimate. They have already visited the site over three weeks ago.

Proposed Violation 11: Charge: 675 IAC 22-2.5: The existing locks on the doors are not panic.

We hope to satisfy this charge along with Violation number 10, prior to having occupancy loads exceeding 50 people at a time.

Let it be on record, that we are not seeking a “change” in occupancy status. If we are required to obtain an additional occupancy status, then we will comply as necessary without giving up our M status for which the building was designed. The A-2 Occupancy status, appears to be less restrictive than the M status group. The owner feels that they are within their acceptable boundaries to occupy the premises and run their business without such occupancy changes.

The owners, from the onset, have sought assistance from the local fire department in an effort to ensure safety and compliance, though this was not deemed necessary or mandated by any governmental entity. The Blue Olive Café contests that they have made all efforts to ensure compliance and safety to the best of their abilities.

Thank you for your consideration in this request for an informal review/petition for review as necessary.

Sincerely,

Lisa Barker, Member

Blue Olive Cafe