
STATE OF INDIANA

FIRE PREVENTION AND BUILDING SAFETY COMMISSION

DEPARTMENT OF HOMELAND SECURITY

RECEIVED
DHS
FEB 27 2017
LEGAL

IN THE MATTER OF
DREYER & REINBOLD BMW,
Petitioner

vs.

VARIANCE NO.: 16-11-02

FIRE PREVENTION AND BUILDING
SAFETY COMMISSION,
Respondent

PETITION FOR ADMINISTRATIVE REVIEW

On February 9, 2017, the Indiana Department of Homeland Security ("DHS") issued a letter (signed by Dean Illingworth, State Building Law Compliance Officer, DHS) denying a Request for Variance (#16-11-02) relating to tents located by temporary sales trailers. The denial letter was addressed to Steve Baker, as representative of Dreyer & Reinbold BMW ("D&R"). A copy of the denial letter is attached as Exhibit "A." As the party whose request for variance has been denied, D&R requests that the Fire Prevention and Building Safety Commission conduct a hearing to review the variance denial. This Petition for Administrative Review is made pursuant to the denial letter, Exhibit A, which states "You are advised that if you desire administrative review of this action, you must file a written petition for review at the above address with the Fire Prevention and Building Safety Commission...If you do so your petition for review will be granted and an administrative proceeding will be conducted by an administrative law judge appointed by the Fire Prevention and Building Safety Commission."

I. Name, Address and Telephone Number of Person Making the Request:

Dreyer & Reinbold BMW, Inc.
c/o Donn H. Wray
BAMBERGER, FOREMAN, OSWALD & HAHN, LLP
201 North Illinois Street, Suite 1225
Indianapolis, Indiana 46204-4219
Telephone: (317) 464-1591

II. Interest of the Person Making the Request; Aggrieved Party:

D&R is the entity making the request that it be granted a variance for tents to protect areas immediately around temporary sales trailers that have been placed for use during a construction project.

III. Legal Issues Proposed for Consideration:

D&R is entitled to grant of its request for variance because its request for variance complies with all required elements, American Tent & Awning Co., Inc., the provider of the tents submitted all required certificates of flame resistance, the tents are required to provide weather protection in the immediate vicinity of the temporary sales trailers which customers and employees must frequent during the construction project (new showroom building), the ramp to the trailers as required by the Americans with Disabilities Act (ADA) in particular is a slipping hazard from precipitation if not covered with its awning tent, D&R was never given advance notice of any meeting held by the Fire Prevention and Building Safety Commission on any date, and the denial of its request for variance at the February 7, 2017 meeting (of which D&R was never given notice) is (1) arbitrary, capricious an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege or immunity; (3) in excess of statutory jurisdiction, authority or limitations or short of statutory right; (4) without observance of procedure required by law, or (5) unsupported by substantial evidence.

IV. Identification of Parties and Counsel:

Petitioner is represented by:

Donn H. Wray
BAMBERGER, FOREMAN, OSWALD & HAHN, LLP
201 North Illinois Street, Suite 1225
Indianapolis, Indiana 46204-4219
Phone: (317) 464-1591

V. Person Against Whom Administrative Review is Requested:

D&R seeks review of DHS's denial of request for variance in its letter dated February 9, 2017 (copy attached). This request for review is directed to:

Chairman
Fire Prevention and Building Safety Commission
Indiana Department of Homeland Security
302 West Washington Street
Room E208
Indianapolis, Indiana 46204

With copy to:

Pamela M. Walters, Esq.
Staff Attorney
302 West Washington Street
Room E208
Indianapolis, Indiana 46204

VI. Applicable Documents:

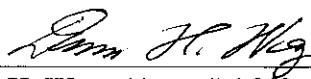
A copy of the February 9, 2017, variance denial letter referenced above is attached hereto as Exhibit "A." Attached as Exhibit "B" is a copy of a December 7, 2016 letter advising that the variance request was "tabled" (a letter never received by D&R which was instead retrieved by undersigned counsel from the DHS's file). Attached as Exhibit "C" is a copy of a January 5, 2017 letter advising that the variance request was "tabled." Petitioner reserves the right to supplement as litigation proceeds.

VII. Conclusion:

WHEREFORE, Petitioner respectfully requests that the Commission (1) hold an adjudicatory hearing before an administrative law judge to review the denial of variance 16-11-02; (2) order grant of the variance; (3) stay effectiveness of denial of the variance until the ruling upon the requested adjudication is issued, pursuant to the request for stay filed contemporaneously herewith; and (4) all additional relief as appropriate and allowed by law.

Respectfully submitted,

BAMBERGER, FOREMAN, OSWALD & HAHN, LLP



Donn H. Wray (Atty. # 1643-49)
201 North Illinois Street, Suite 1225
Indianapolis, Indiana 46204-4219
Telephone: (317) 464-1591
Email: dwrap@bamberger.com
Attorney for Petitioner, Dreyer & Reinhold, BMW



MICHAEL R. PENCE, Governor
STATE OF INDIANA

DEPARTMENT OF HOMELAND SECURITY

DAVID W. KANE, EXECUTIVE DIRECTOR

Indiana Department of Homeland Security
Indiana Government Center South
302 West Washington Street
Indianapolis, IN 46204
317-232-3980

February 9, 2017

STEVE BAKER
DRYER AND REINBOLD BMW
9375 WHITLEY DR

INDIANAPOLIS, IN 46240

Dear STEVE BAKER,

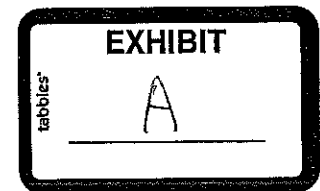
This letter provides notice below of the action taken by the Fire Prevention and Building Safety Commission on your application(s) for a variance(s) from the Commission's rules under IC 22-13-2-11 and 675 IAC 12-5. The Commission considered the application with all alternatives offered, as a part of its published agenda, at its regular meeting on February 7, 2017.

Project Number	Project Name	Variance Number
	TEMPORARY SALES TRAILERS	16-11-02

Commission Conditions

Edition	Code	Code Section	Commission Action & Date
IN FC 2014		3103.5	Not Approved 02/07/2017

You are advised that if you desire an administrative review of this action, you must file a written petition for review at the above address with the Fire Prevention and Building Safety Commission. Your petition must fully identify the matter for which you seek review no later than eighteen(18) calendar days from the above stated date of this letter, unless such date is a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours; in which case the deadline would be the first day thereafter that is not a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours. If you do so, your petition for review will be granted and an administrative proceeding will be conducted by an administrative law judge appointed by the Fire Prevention and Building Safety Commission. If you do not file a petition for review, this action will be final.



Please be further advised that you may request an opportunity to informally discuss this matter prior to filing a petition for review. Such informal discussion, or request therefore, does not extend the deadline for filing a petition for review and, therefore, any request for an informal discussion should be made promptly, preferably by telephone or e-mail, upon receipt of this letter.

Sincerely,



Dean Illingworth
State Building Law Compliance Officer,
Department of Homeland Security



MICHAEL R. PENCE, Governor
STATE OF INDIANA

DEPARTMENT OF HOMELAND SECURITY

DAVID W. KANE, EXECUTIVE DIRECTOR
Indiana Department of Homeland Security
Indiana Government Center South
302 West Washington Street
Indianapolis, IN 46204
317-232-3980

December 7, 2016

STEVE BAKER
DRYER AND REINBOLD BMW
9375 WHITLEY DR

INDIANAPOLIS, IN 46240

Dear STEVE BAKER,

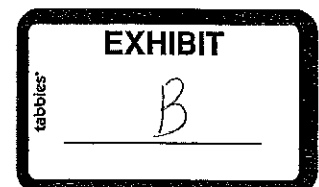
This letter provides notice below of the action taken by the Fire Prevention and Building Safety Commission on your application(s) for a variance(s) from the Commission's rules under IC 22-13-2-11 and 675 IAC 12-5. The Commission considered the application with all alternatives offered, as a part of its published agenda, at its regular meeting on December 6, 2016.

Project Number	Project Name	Variance Number
	TEMPORARY SALES TRAILERS	16-11-02

Commission Conditions

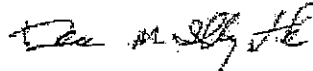
Edition	Code	Code Section	Commission Action & Date
IN FC 2014		3103.5	Tabled 12/06/2016

You are advised that if you desire an administrative review of this action, you must file a written petition for review at the above address with the Fire Prevention and Building Safety Commission. Your petition must fully identify the matter for which you seek review no later than eighteen(18) calendar days from the above stated date of this letter, unless such date is a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours; in which case the deadline would be the first day thereafter that is not a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours. If you do so, your petition for review will be granted and an administrative proceeding will be conducted by an administrative law judge appointed by the Fire Prevention and Building Safety Commission. If you do not file a petition for review, this action will be final.



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Sincerely,

A handwritten signature in cursive script, appearing to read "Dean M. Illingsworth".

Dean Illingsworth
State Building Law Compliance Officer,
Department of Homeland Security



MICHAEL R. PENCE, Governor
STATE OF INDIANA

DEPARTMENT OF HOMELAND SECURITY

DAVID W. KANE, EXECUTIVE DIRECTOR
Indiana Department of Homeland Security
Indiana Government Center South
302 West Washington Street
Indianapolis, IN 46204
317-232-3980

STEVE BAKER
DRYER AND REINBOLD BMW
9375 WHITLEY DR

January 5, 2017

INDIANAPOLIS, IN 46240

Dear STEVE BAKER,

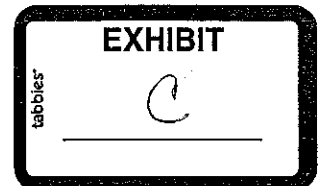
This letter provides notice below of the action taken by the Fire Prevention and Building Safety Commission on your application(s) for a variance(s) from the Commission's rules under IC 22-13-2-11 and 675 IAC 12-5. The Commission considered the application with all alternatives offered, as a part of its published agenda, at its regular meeting on January 4, 2017.

Project Number	Project Name	Variance Number
	TEMPORARY SALES TRAILERS	16-11-02

Commission Conditions

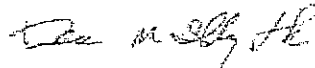
Edition	Code	Code Section	Commission Action & Date
IN FC 2014		3103.5	Tabled 01/04/2017

You are advised that if you desire an administrative review of this action, you must file a written petition for review at the above address with the Fire Prevention and Building Safety Commission. Your petition must fully identify the matter for which you seek review no later than eighteen(18) calendar days from the above stated date of this letter, unless such date is a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours; in which case the deadline would be the first day thereafter that is not a Saturday, Sunday, legal holiday under state statute, or day that the Department of Homeland Security's offices are closed during regular business hours. If you do so, your petition for review will be granted and an administrative proceeding will be conducted by an administrative law judge appointed by the Fire Prevention and Building Safety Commission. If you do not file a petition for review, this action will be final.



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Sincerely,

A handwritten signature in cursive script, appearing to read "Dean M. Illingsworth".

Dean Illingsworth
State Building Law Compliance Officer,
Department of Homeland Security