

CERTIFIED MAIL #7002-2410-0000-1701-5879

May 12, 2015

Ben Hall, General Manager  
Hall Drive-Ins, Inc. d/b/a Nick's Boardwalk  
216 US 930 West  
New Haven, IN 46774

**Order to Approve a Variance**

Mr. Hall,

You are hereby notified that based on the recommendation of the Indiana State Department of Health Food Protection Program (ISDH), and as authorized by Indiana Code (IC) 16-19-3-4.3 and IC 16-42-5-5.2, the State Health Commissioner hereby orders that a variance be approved to Ben Hall, General Manager, Hall Drive-Ins, Inc. d/b/a/ Nick's Boardwalk.

On March 19, 2015, this office received a request from you representing Hall Drive-Ins, Inc. d/b/a Nick's Boardwalk, 327 East Superior, Fort Wayne, IN 46802 to vary, among others, sections 413 and 414 of 410 IAC 7-24, "Retail Food Establishment Sanitation Requirements," relating to an existing permanent retail food establishment operating with outdoor food preparation. A meeting with Company representatives, Allen County Health Department (ACHD) and ISDH occurred on April 10, 2015 to gather information related to the variance request. Correspondence has been exchanged since then to affirm agreement on the conditions and criteria for an approved variance.

This **VARIANCE APPROVAL** is based on the following conditions and criteria:

- The interior of The Shed was in a state of remodel at the time of the meeting on April 10, 2015. This remodeling will be completed to be in significant compliance, except as stated elsewhere in this document, as determined by ACHD to include tasks such as:
  - Re-installation of the three compartment sink, service/utility sink, refrigeration equipment;
  - Finish repair and painting of interior surfaces;
  - Make employee restroom door self-closing;
  - Add covered wastebasket to restroom.
- The Shed and outdoor bar, except as noted above, will not be substantially modified without notice to, and comment from, ACHD and/or ISDH prior to commencement of such activities and after submission of written plans. As used here, the term "substantially modified" means no modifications requiring a building permit will be made to the facility throughout the duration of this variance. Typical equipment maintenance (e.g., replacing a counter, refrigerator, or an ice bin

for a similar unit) or modifications that do not fundamentally alter the nature of the operation (e.g., adding or removing draft beer lines) are not considered to be substantially modified.

- The outdoor bar operation is dependent on The Shed and The Gas House Restaurant to provide prepared food and to support cleaning and food storage functions. As used here, the term “prepared food” does not include beverages prepared at the outdoor bar.
- When not in operation (e.g. during inclement weather or after hours) all drink ingredients, drink-making paraphernalia and glassware will be removed from the bar to The Shed or The Gas House Restaurant.
- When not in operation, The Shed will be sealed and locked by way of tight fitting doors, windows and screening, preventing infiltration of pests during non-business hours.
- Food provided from the outdoor bar will be limited to providing only beverages similar to those on the attached menu. See page 8. There is an acknowledgement that this encompasses both alcoholic and non-alcoholic beverages and that the composition of menu-listed beverages and those custom-ordered by patrons can be varied and is subject to change.
- The bar will operate on a seasonal basis during warmer months and will not operate during inclement weather, such as when there are high winds or when precipitation is sufficient, in the opinion of the operator, to cause contamination of food or food-contact surfaces.
- When the air temperature is less than 75F, warewashing by employees in The Shed to support the outdoor bar will be done in small batches to assure detergent and sanitizer solution temperatures are maintained high enough to be effective.
- Because both The Shed and outdoor bar operation are located within a few feet vertically and horizontally of the St. Mary’s River, a flood action plan covering The Shed and outdoor bar will be developed within 90 days of the date of this letter and will be reviewed with staff prior to seasonal re-opening each year.
- There is no designed lighting in the outdoor bar area and there appears to be less than the required 70 lumens of lighting provided to equipment surfaces in The Shed. This will be compensated through the daily “Deck Sanitation Checklist” by examining food-contact surfaces for contamination and by examining in and around the building daily for pest related issues. Corrective actions will be taken if contamination or pest control issues are identified.
- The floor of the bar, the painted exposed ceiling rafters in The Shed, the walls behind equipment in the bar, will be allowed to continue as they exist at the time the current remodeling is completed. They will remain as such unless they are observed to be contributing to a pest control or other significant hazard to the food handling operation being conducted there.
- A Certified Food Handler, as described in 410 IAC 7-22, will be provided on the premises of Nick’s Boardwalk and/or The Gas House Restaurant during all hours of operation of the outdoor bar.
- The outdoor bar will be attended by an employee during all hours of operation.
- There is an overhead door on The Shed’s South side and a door opening into the bar on the North side of The Shed. These are kept open during operating hours to accommodate numerous employee serving transactions. Because these doors are always open, the interior areas of The Shed will be treated as if they are outdoors with respect to pest control practices, warewashing, and

food storage. This means the three compartment sink and any other exposed food-contact surfaces will be cleaned and sanitized each day before use and throughout the day as needed to assure that surfaces are clean enough for use. If the company develops an alternative to having these doors continually open, the alternative will be reviewed by ACHD and ISDH prior to any changes being made.

- This item primarily relates to past practice of storing soiled tableware outside of The Shed while being accumulated for transport to the supporting restaurant. Handling of open food or handling of clean/soiled tableware will occur only in the outdoor bar, in The Shed, or in the Gas House. This does not include wait staff while attending patrons of The Deck or transport of food and food-contact surfaces between The Shed and the Gas House Restaurant. Acceptable options would be: 1) to store accumulating soiled tableware outdoors enclosed in a portable rack with a top, sides and a door, or 2) to enclose such racks of tableware in an openable/closeable plastic cover (such as is commonly used with doughnut deliveries). Other alternatives may be proposed in writing to ACHD/ISDH.
- Food and unpackaged single-service items will not be stored in The Shed in months when the outdoor bar is not in operation.
- Attached is a blank copy of the "Deck Sanitation Checklist," which will be used daily to communicate within the business that there has been a review of food safety/sanitation procedures and, if necessary, corrections made. See pages 6&7.
- Completed checklists will be retained for a period of at least two years from the date of creation and made available during all inspections by the ACHD to verify that the provisions of this agreement have been met. These records may be retained as paper or electronic files as long as they are immediately accessible upon request during inspection by the ACHD.
- Before seasonal operation, and again at least once again during the operating season, an assessment will occur of the condition/cleanability of food-contact surfaces which have been exposed to the outdoors.
- Records reflecting services rendered by the pest control company mentioned elsewhere in this document will be retained and made available for inspection by ACHD for a period of at least two years from the date the services were rendered.
- Pest control services provided by Ecolab or any subsequent pest control company will be continued for at least at the same level of service stated in the application document.

The following items will be treated as standard operating procedures (SOPs) and become agreed upon conditions and criteria for the duration of this variance:

- All drink preparation, equipment, fixtures and ingredient storage takes place under the cover of permanent roof structures.
- Ice bins containing consumable ice are fitted with covers and are melted, cleaned and sanitized daily or immediately if contamination is detected. All ice used at the Deck is produced in machines located inside The Gas House Restaurant.
- All glassware is under permanent roof cover and properly stored during service. Glass washing is accomplished either in an approved three compartment sink in The Shed or in the temperature sanitizing automatic dish machine inside The Gas House Restaurant.

- Soft drinks are dispensed from approved dispensing equipment which is thoroughly cleaned and sanitized daily or immediately if contamination is detected.
- All liquor bottles, mixers and other liquid drink ingredients are properly stored and fitted with either a sealed cap or a sealed liquor spout. Any ingredient determined to be contaminated is immediately discarded.
- Drink garnishes (lemons, limes, cherries, celery, oranges, etc.) at the point of service are staged indoors in small quantities in an approved container with a fitted lid and are kept in sealed containers under approved refrigeration until needed. Contaminated garnishes are immediately discarded.
- Garbage and refuse is immediately removed from the premise to the waste dumpster, approximately 200 feet away, and is not allowed to accumulate.
- Soiled plates and tableware are removed to The Gas House Restaurant for washing and never allowed to remain at The Deck.
- The facility is routinely maintained through the course of the day, not allowing incidental waste or debris to accumulate on counters, floor surfaces or service areas.
- Draft beer faucets are routinely cleaned and sealed with plastic fittings when not in use.
- There is no mechanical equipment exposed to outside elements. All refrigeration equipment is inside The Shed and is secured completely during non-business hours.
- Permanent fixtures outside of The Shed consist solely of stainless steel counters, sinks, and ice bins and a wood framed bar. All of these fixtures are under permanent roof cover and are constantly maintained during the course of service, as well as part of the daily closing and opening protocol. Additionally, the wood surfaces of the permanently attached bar structure are maintained and resealed on a semi-annual basis.
- Daily janitor service takes place, preventing accumulation of debris and food waste within the licensed premise. Additionally, daily cleanup of the river bank adjacent to the location is conducted to reduce harborage conditions surrounding the facilities.
- Professional monitoring and active pest control services will be provided throughout the duration of this variance. The current contract with ECOLAB, as represented on page 9 of this document, reflects an intent to enact this item. See page 9, "Scope of Services" document.
- A copy of this approval letter and the submitted materials must be kept onsite at all times and readily available for review by state and/or local health department personnel.
- This variance Order is not transferable to a new owner and does not extend to other locations.
- Hall Drive-Ins, Inc. d/b/a/Nick's Boardwalk shall comply in all aspects of the 410 IAC 7-24, as determined by the ISDH and/or local health department, except as stated herein.
- This variance Order is limited to being in compliance with all other applicable state and local regulations.
- Any provisions not adhered to may result in the revocation of this order.

- Some of the submitted materials may be considered confidential or proprietary for Hall Drive-Ins, Inc. d/b/a/ Nick's Boardwalk. It has been agreed that Hall Drive-Ins, Inc. d/b/a/ Nick's Boardwalk allows copying and transmittal of submitted materials to Indiana food regulatory authorities for regulatory purposes.

**If you wish to request an administrative review or stay of effectiveness of this decision pursuant to Indiana Code §40-21.5-3-7(a), you must petition for such review in writing. The petition must state facts demonstrating that:**

- a. you are a person to whom the decision is specifically directed;
- b. you are aggrieved or adversely affected by the decision; or,
- c. you are entitled to review under any law.

**Your request for review or stay of effectiveness must be filed in writing and addressed to:**

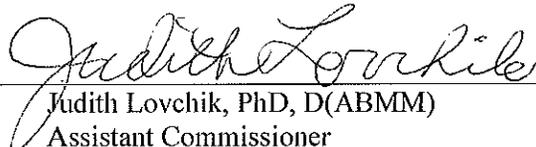
**Indiana State Department of Health  
Attn: Court Administrator  
Office of Legal Affairs  
2 North Meridian Street, Section 3H  
Indianapolis, Indiana 46204**

**on or before June 12, 2015. If no request for review or stay of effectiveness is filed by June 12, 2015, this decision shall become final.**

DATED AT INDIANAPOLIS, INDIANA THIS 12th DAY OF MAY 2015.

PURSUANT TO IC 16-19-3-4.3 AND IC 16-42-5-5.2, I HEREBY APPROVE A VARIANCE OF FOOD PROTECTION RULES AS STATED ABOVE.

JEROME M. ADAMS, MD, MPH  
STATE HEALTH COMMISSIONER

By:   
Judith Lovchik, PhD, D(ABMM)  
Assistant Commissioner  
Public Health Protection and Laboratory Services Commission

cc: ISDH Executive Board  
ISDH Food Protection Staff  
ISDH Office of Legal Affairs  
Allen County Health Department