

**BEFORE THE HEARING OFFICER
ALLEGHENY COUNTY HEALTH DEPARTMENT**

EL PASA, INC., d/b/a DONUT CONNECTION,)	Docket no.: ACHD-22-051
)	
Appellant,)	
)	
v.)	
)	
ALLEGHENY COUNTY)	
HEALTH DEPARTMENT,)	
)	
Appellee.)	

MEMORANDUM OPINION

This matter involves Appellee Allegheny County Health Department’s (“ACHD”) denial of a variance request made by Appellant El Pasa, Inc., d/b/a Donut Connection. For the reasons stated hereunder, we find that ACHD acted in accordance with the relevant law and facts when denying Appellant’s request for a variance, and we DISMISS Appellant’s Notice of Appeal with prejudice to refile.

Procedural History

Donut Connection is a chain of restaurants serving coffee, donuts, and other breakfast food. The facility owned by Appellant and relevant to these proceedings is located at 2704 Harbison Street, Natrona Heights, PA 15065. ACHD sent a letter to Appellant on September 20, 2021, informing them that they were not in compliance with ACHD Art. III § 315.¹ See H.T. at 30: 21-23; *see also* ACHD Ex. C. Appellant then submitted a request for variance to ACHD pursuant to Art. III § 337.3 on November 17, 2021. See H.T. at 35: 3-5; *see also* ACHD Ex. F. ACHD informed Appellant that its request for a variance was denied on October 6, 2022. Appellant filed a Notice of Appeal with the undersigned Hearing Officer regarding ACHD’s

¹ The violation is of Art. III *as amended* 3/20/17.

denial of the variance request on November 8, 2022. A Hearing was held on February 28, 2023, before the undersigned Hearing Officer. Both Appellant and ACHD submitted Post-Hearing Briefs on April 24, 2023. The matter is now ripe for disposition by this Tribunal.

Discussion

Art. III governs food safety in Allegheny County and is enforced by ACHD. Art. III § 315 requires that “[p]lumbing shall be properly maintained and installed according to the [ACHD] Plumbing Code.” The Plumbing Code is contained in Art. XV, where § 1003.3.1 requires that:

A grease interceptor or automatic grease removal device shall be required to receive the drainage from fixtures and equipment with grease-laden waste located in food preparation areas, such as in restaurants, hotel kitchens, hospitals, school kitchens, bars, factory cafeterias and clubs . . . Grease interceptors and automatic grease removal devices shall receive waste only from fixtures and equipment that allow fats, oils or grease to be discharged.

ACHD conducted an initial inspection of Appellant’s facility on August 27, 2020, and discovered that “there is no waste water disposal at the . . . sink as required by the Plumbing Code.” *See* H.T. at 17: 4-10; *see also* ACHD Ex. A. ACHD inspected the facility again on September 9, 2021, and found that a grease interceptor had still not been installed as required by the Plumbing Code. *See* H.T. at 17: 23-24; *see also* ACHD Ex. B. Prior to Appellant submitting a request for variance, ACHD issued a letter to Appellant on September 20, 2021, warning them that a grease interceptor needed to be installed at the facility by December 14, 2021. *See* H.T. at 30: 21-23; *see also* ACHD Ex. C.

Pursuant to Art. III § 337.3, ACHD “may grant variance or conditional variance from any of the requirements of this regulation if [ACHD] so determines that the granting of such variance poses no real or potential hazard to the health, safety, or welfare of the public.” Therefore, it is at the discretion of ACHD whether to grant a party’s request for a variance when they are

required to comply with Art. III. In its letter seeking a variance submitted to ACHD on November 17, 2021, Appellant based its request on the claims that “[n]othing related to the production of coffee or donuts goes down the drain system”; it “does not have the adequate space or slope needed for the grease trap/interceptor”; and “[i]t would be a financial burden for the cost of the trap.” ACHD Ex. F.

Art. XI governs appeals of enforcement actions or denials of permits made by ACHD. Art XI § 1105(C)(8) provides that “the Hearing Officer shall hear and admit only such testimony and evidence as is relevant to the matters and issues set forth in the Notice of Appeal.” Appellant’s Notice of Appeal sought reversal of ACHD’s denial of the variance request on the following basis:

- (1) Financial strain on the business for the cost and lost revenue when installation takes place;
- (2) There are no reported issues of contamination where the business is located; and
- (3) An owner of another Donut Connection confirmed that its grease traps were never cleaned, leading Appellant to believe that the disposal from the facility does not contaminate drains.

During the Hearing, Appellant contested the denial of the variance request on the grounds that the facility has never had any plumbing issues. *See* H.T. at 7: 18-25.


In Pennsylvania, “[a]n interpretation by the agency charged with the administration of a particular law is normally accorded deference, unless clearly erroneous.” *Harkness v. UCBR*, 591 Pa. 543, 920 A.2d 162, 171 (2007). In this instance, ACHD defines “grease-laden waste” to mean “items that are washed and cleaned and sanitized at the three-compartment sink in a facility . . . where the utensils and equipment are cleaned at.” H.T. at 14: 18-21. Examples of grease-laden waste include “[i]tems that come off of . . . pots and pans and that are used for cooking and food preparation, or utensils used in a similar manner handling food and food preparation.” *Id.*

In this instance, Appellant concedes that it uses metal utensils when removing donuts from the fryer at the facility and that it cleans the utensils at the sink. *See id.* at 8: 8-12. Appellant also testified that it washes the “metal holders that put the screen into the fryer” every day. *See H.T.* at 40: 1-6. Appellant attempted to argue that, because it uses Dawn degreaser when washing items at the facility, grease does not go down the drain. *See id.* at 8: 17-18. However, testimony from ACHD shows that grease from washed items still ends up down the drain even if degreaser is used. *See id.* at 15: 8-18. Lastly, Appellant conceded that it “would be a very minimal amount [of grease] that goes down It would be extremely minimal is all I can say as far as the amount down the drain. It’s probably far less than an average household would ever produce.” *Id.* at 40: 12-20. We therefore find that Appellant washes grease-laden waste down the drain at the facility without the presence of a grease trap as required by Art. XV § 1003.3.1.

ACHD thus acted in accordance with the relevant regulatory laws when denying Appellant’s request for a variance. Appellant’s defenses based on the cost associated with installing a grease trap and similar restaurant facilities that do not contain grease traps are insufficient to overcome ACHD’s decision, as granting a variance is at ACHD’s discretion.

Conclusion

During the Hearing, ACHD demonstrated that Appellant’s facility regularly washes grease-laden waste down the drain and is therefore required to have a grease trap pursuant to Art. XV § 1003.3.1, which is incorporated by Art. III § 315. Further, ACHD is under no obligation to grant a variance to Appellant for the reasons proffered. We therefore DISMISS Appellant’s Notice of Appeal with prejudice to refile.

/s/ 

John F. McGowan, Esquire
Hearing Officer
Allegheny County Health Department

