

COUNTY OF



ALLEGHENY

May 17, 2019

VIA INTER-OFFICE MAIL AND EMAIL

Max Slater, Esq.
Administrative Hearing Officer
Allegheny Co. Health Dept.
542 Fourth Avenue
Pittsburgh, PA 15219

RE: Priory Hospitality Group Appeal (Client #200712170007).

Dear Hearing Officer Slater:

On October 20, 2017, the Allegheny County Health Department (“Department”) ordered Priory Fine Pastries, located at 528 East Ohio Street, Pittsburgh, PA 15212 (“Facility”), to remove customer seats until a variance was requested and approved because the Facility did not provide public restrooms separate for each sex as required by the Department’s Rules and Regulations Article III, “Food Safety” (“Article III”). On November 17, 2017, the Priory Hospitality Group filed an appeal and requested 6 customer seats at the Facility without installing publicly accessible restrooms separate for each sex. On May 9, 2019, the Department approved a variance of Article III and will permit 6 customer seats at the Facility and will not require the Facility to install public restrooms separate for each sex. Thus, as there is no controversy at this time, the appeal is moot and the Department hereby makes a motion for its dismissal. If you have any questions, I can be reached at 412-578-2653.

Sincerely,

Vijyalakshmi Patel
ACHD Assistant Solicitor

Enclosures

cc: Donna Scharding, ACHD Food Safety Program Manager (via email)
John E. Graf, Appellant (via email)



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
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November 17, 2017

BY HAND DELIVERY

Karen A. Hacker, M.D., MPH
Director
Allegheny County Health Department
542 Fourth Avenue
Pittsburgh, PA 15219

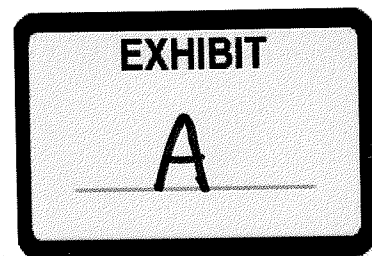
Re: Priory Fine Pastries, 528 East Ohio Street, Appeal and Request for Variance

Dear Dr. Hacker:

I am writing to appeal a citation from the Allegheny County Health Department's ("ACHD") Food Safety Program for our operation at Priory Fine Pastries, 528 East Ohio Street, Pittsburgh, PA 15212, and to request a variance from the County Food Safety Code's requirement at section 316 that a food service venue with any seating must provide two (2) public restrooms.

The reason for this appeal and request for a variance is as follows:

- When Priory Hospitality Group. ("PHG") opened Priory Fine Pastries ("PFP") in 2007, ACHD inspected and licensed the premises. As part of that authorization, ACHD's permit allowed for six seats without any public restroom.
- In reliance on that authorization, since 2007, PFP has maintained limited seating in the front portion of the store.
- PFP's primary business is selling baked goods to the public at retail for take-out. The vast majority of its trade consists of transactions across the counter, with the customer selecting and paying for baked goods and then leaving the premises.
- However, PFP does offer coffee, pastries and sandwiches which some customers enjoy consuming within the store. PFP also uses the seating to meet with clients regarding wedding and other elaborate cakes and displays of baked goods. Take out customers will also use the seating as they wait for an order to be prepared.




- In addition, the seating at PFP has become a neighborhood asset and a respite in a struggling business district. Children see the PFP store as a safe space, while the elderly will use the seating as a resting place while they shop. It acts as a gathering place for neighbors.
- PFP is located in a Victorian era building which first served as the production facility and store for the D. L. Clark candy company. The production area of the building consumes $\frac{3}{4}$'s of the building's floor space. The vast majority of the "store" area is devoted to counter space and retail display. Consequently, there is no possibility of operating the production facility and the retail area while maintain one, much less two, public restrooms.
- Thus, the only way to comply with the directive from the Food Safety Program is to remove the seating.

Removal of the seating from this store would be an unjust result, however, and would result in harm to the public without any benefit, due to:

- When opened, ACHD authorized seating in the store. PFP operated for more than ten (10) years without complaint from the public or from ACHD food safety inspectors. PFP has relied upon the variance issued by ACHD in 2007 in purchasing the furniture, designing menus to highlight certain items for in-store consumption, and in making the in-store seating a key part of its product offering. If required to remove the seating, PFP will suffer harm to its business, which already operates on thin margins in a financially distressed business district.
- As noted, it is impossible to remedy the problem by adding bathrooms. The sole remedy is to remove the seating. Thus, there is no way the public will benefit by the addition of restrooms. It will, however, deprive the public of a safe space, a respite and a gathering place.

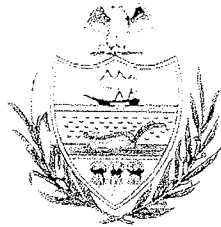
Accordingly, Priory Fine Pastries respectfully requests that ACHD (a) schedule a hearing regarding this appeal; and (b) following such hearing grant PFP a variance from the restroom requirement of the section 316 of the Food Safety Code based upon the foregoing reasons.

Respectfully submitted,



John E. Graf
Owner
Priory Fine Pastries

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

May 9, 2019

Priory Hospitality, Inc.
c/o John E. Graf
614 Pressley Street
Pittsburgh, PA 15212-5616

RE: Request for Variance
Client #200712170007
Priory Fine Pastries
528 E. Ohio Street
- Ward 23

Dear Mr. Graf:

This letter is in response to your request for a variance from Article III, the Allegheny County Health Department rules and regulations governing "Food Safety", sections 316.1C and D - "Toilet Rooms and section 315 - "Plumbing". Article III requires for the provision of separate male and female toilet rooms for patrons of food facilities where seating is provided and that such toilet rooms cannot be accessed through food preparation or food storage areas.

Your request for 6 seats without toilet rooms is approved and a variance is granted conditioned upon the following:

- There are no more than 6 seats present at any one time for patrons to consume food on the premises, both indoors and outdoors;
- A sign is conspicuously displayed that clearly states that there are no toilet rooms accessible to customers or the public;
- No one from the public is allowed access to the employee toilet room in the basement;
- Hand sanitizer is available at all times of business for customer use; and
- The nature of the business remains the same.

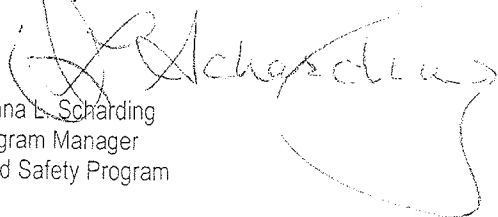
This variance is NOT transferable should the facility change ownership and it is only approved based upon the above conditions. Should the aforementioned conditions change, or should this office receive complaints regarding toilet room access, the variance will become null and void.

PLEASE RETAIN THIS DOCUMENT AT YOUR FOOD FACILITY FOR REVIEW AT ANY TIME UPON REQUEST.

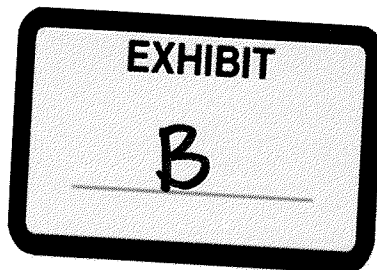
Pursuant to Article XI, entitled "Hearings and Appeals", you are hereby notified that you have thirty (30) days after issuance of this notice in which to file a written appeal. The appeal shall be filed in the office of the Director, 542 Fourth Avenue, Pittsburgh, PA 15219. In the event that an appeal is not filed within thirty (30) days after issuance of this order, the within action shall become final.

Feel free to contact me if you have questions.

Respectfully,



Donna L. Scharding
Program Manager
Food Safety Program



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT

FOOD SAFETY PROGRAM

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