



September 26, 2018  
By U.S. Postal Mail

Justin Leverton, Esq.  
Kroger Gardis & Regas, LLP  
111 Monument Circle  
Suite 900  
Indianapolis, IN 46204

**Re: Petition for Review – Variance No. 18-05-04 – Fazoli’s**

Dear Mr. Leverton:

The Commission is in receipt of your petition for review of Variance No. 18-05-04 – Fazoli’s, dated 9/17/2018. 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 staff attorney assigned to the matter, Justin Guedel at [JGuedel@dhs.in.gov](mailto: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 signatory.

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  
[doboyle@dhs.in.gov](mailto:doboyle@dhs.in.gov)  
(317) 650-7720

cc: Justin Guedel, IDHS Staff Attorney (via personal service)  
The Honorable Chelsea E. Smith, Administrative Law Judge (via personal service)  
File

**From:** [DHS Legal Mailbox](#)  
**To:** [Boyle, Douglas J \(DHS\)](#)  
**Subject:** FW: Petition for Review  
**Date:** Monday, September 24, 2018 3:14:09 PM

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**From:** noreply@formstack.com [mailto:noreply@formstack.com]  
**Sent:** Monday, September 17, 2018 1:51 PM  
**To:** DHS Legal Mailbox <Legal@dhs.IN.gov>  
**Subject:** Petition for Review

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

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**Formstack Submission For: [petition for review](#)**  
Submitted at 09/17/18 1:50 PM

**Individual Name:** Roger Distler

**Business Name :** SEA USA, LLC / J&K FFFI 3, LLC

**Phone Number:** (317) 716-3108

**Email Address:** [rdistler@sjcinc.com](mailto:rdistler@sjcinc.com)

**Mailing Address:** 295 Harrison Ct  
Danville, IN 46122

**Are you represented by an attorney?:** Yes

**Attorney Name:** Justin Leverton

<b>Firm:</b>	Kroger Gardis & Regas, LLP
<b>Phone Number:</b>	3177777414
<b>Email Address:</b>	<a href="mailto:JWL@kgrlaw.com">JWL@kgrlaw.com</a>
<b>Mailing Address:</b>	111 Monument Circle Suite 900 Indianapolis, IN 46204
<b>Order Number:</b>	-1
<b>Facility   Device   Boiler ID:</b>	
<b>Date Order Received:</b>	Sep 03, 2018
<b>How did you receive the Order? :</b>	Mail
<b>Entity Issuing Order:</b>	Fire Prevention and Building Safety Commission
<b>Entity Name:</b>	
<b>Upload Order:</b>	
<b>Was this order specifically directed to you?:</b>	Yes
<b>Explain:</b>	KGR represents the tenant of the Building, J&K FFFI 3, LLC. The owner of the Building SEA USA, LLC applied for the variance in coordination with the tenant

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

Yes

**Explain:**

The exterior hood vents and rooftop HVAC units were designed by Tom Allen, an Indiana licensed architect (AR0003852), of Susan May Allen Architects. According to the architect's plans and specifications and Tenant's contract with the architectural firm, the design comports with state and local laws. Indeed, no governmental entity advised as to this issue until immediately prior to the final certificate of occupancy was to be issued. In addition, numerous more recently constructed adjacent buildings have similar HVAC and rooftop exhaust vents without ladder and railing systems. See the attached photos. Accordingly, the Landlord and Tenant are subject of selective enforcement of this law. Finally, the applicants due process rights were violated as they did not have notice of the proposal or an opportunity to be heard. The variance application was tabled 8-9 times. When it came up for hearing, neither the Landlord nor the Tenant received notice that it would be considered at the August 2018 hearing.

**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? :**

No

**What law?:**

This question is not applicable because the Order was directed at

**I request review of the entire order described above:**

Yes

<b>If you are not requesting review of the entire order, what is the scope of your request?:</b>	N/A
<b>I request a stay of effectiveness:</b>	Yes
<b>What is the basis of your challenge? :</b>	<p>1) The Plans and Specifications comport with Indiana law as prepared by a license architect and the Petitioner should be permitted to present evidence of the same</p> <p>2) The proposed modifications are being selectively enforced as numerous adjacent properties that are more recently constructed also do not comply. The Petitioner has attached evidence of same.</p> <p>3) The Petitioners due process rights were violated as they were given no notice of the hearing (which had been tabled 8-9 times) and therefore were unable to present evidence in support</p>
<b>What is your desired outcome? :</b>	Grant the variance requested in the application and order the issuance of a certificate of occupancy
<b>Additional information in support of my request:</b>	Sworn testimony of Tom Allen, Architect (812) 597-4393 See the bookmarks on the attached PDFs for address of similar properties
<b>Additional Attachments:</b>	<a href="#">View File</a>
<b>Additional Attachments:</b>	<a href="#">View File</a>
<b>Additional Attachments:</b>	<a href="#">View File</a>

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Formstack, 8604 Allisonville Road, Suite 300, Indianapolis, IN 46250































# APPLICATION FOR VARIANCE

State Form 44400 (R7 / 10-13)  
Approved by State Board of Accounts, 2013

INDIANA DEPARTMENT OF HOMELAND SECURITY  
CODE SERVICES SECTION  
302 West Washington Street, Room W246  
Indianapolis, IN 46204-2739  
[http://www.in.gov/dhs/fire/fp\\_bs\\_comm\\_code/](http://www.in.gov/dhs/fire/fp_bs_comm_code/)



**INSTRUCTIONS:** Please refer to the attached four (4) page instructions.  
Attach additional pages as needed to complete this application.

Variance number (Assigned by department)

1. APPLICANT INFORMATION (Person who would be in violation if variance is not granted; usually this is the owner)		
Name of applicant	Title	
Roger Distler	Owner	
Name of organization	Telephone number	
SEE USA, LLC/SIC, Inc.	(317) 716-3108	
Address (number and street, city, state, and ZIP code)		
295 Harrison Court, Danville Indiana 46122		
2. PERSON SUBMITTING APPLICATION ON BEHALF OF THE APPLICANT (If not submitted by the applicant)		
Name of applicant	Title	
Jon Aiello	Chief Operating Officer	
Name of organization	Telephone number	
J&K FFFI 3, LLC.	(317) 490-3853	
Address (number and street, city, state, and ZIP code)		
315 US Highway 31 South Greenwood, Indiana 46142		
3. DESIGN PROFESSIONAL OF RECORD (If applicable)		
Name of design professional	License number	
Tom Allen	AR00032852	
Name of organization	Telephone number	
Susan May Allen Architects	(812) 597-4393	
Address (number and street, city, state, and ZIP code)		
8759 Lick Creek Rd Morgantown, Indiana 46160		
4. PROJECT IDENTIFICATION		
Name of project	State project number	County
Fazoliz	2016-804	Boone
Address of site (number and street, city, state, and ZIP code)		
6378 Crane Drive Whitestown, IN 46075		
Type of project		
<input type="checkbox"/> New <input type="checkbox"/> Addition <input type="checkbox"/> Alteration <input type="checkbox"/> Change of occupancy <input checked="" type="checkbox"/> Existing		
5. REQUIRED ADDITIONAL INFORMATION		
The following required information has been included with this application (check as applicable):		
<input checked="" type="checkbox"/> A check made payable to the Indiana Department of Homeland Security for the appropriate amount. (see instructions)		
<input checked="" type="checkbox"/> One (1) set of plans or drawings and supporting data that describe the area affected by the requested variance and any proposed alternatives.		
<input checked="" type="checkbox"/> Written documentation showing that the local fire official has received a copy of the variance application.		
<input checked="" type="checkbox"/> Written documentation showing that the local building official has received a copy of the variance application.		
6. VIOLATION INFORMATION		
Has the Plan Review Section of the Division of Fire and Building Safety issued a Correction Order?		
<input type="checkbox"/> Yes (If yes, attach a copy of the Correction Order.) <input type="checkbox"/> No		
Has a violation been issued?		
<input checked="" type="checkbox"/> Yes (If yes, attach a copy of the Violation and answer the following.) <input type="checkbox"/> No		
Violation issued by:		
<input checked="" type="checkbox"/> Local Building Department <input type="checkbox"/> State Fire and Building Code Enforcement Section <input checked="" type="checkbox"/> Local Fire Department		

**7. DESCRIPTION OF REQUESTED VARIANCE**

Name of code or standard and edition involved

IMC 403

Specific code section

Roof Top Mechanical access

Nature of non-compliance *(Include a description of spaces, equipment, etc. involved as necessary.)*

Original approved plans submitted to both State & City reflected a basic railing around HVAC rooftop Units. We have since been advised we need full Platform and ladder & Railing system estimated to cost in Excess of \$30,000. This was an existing building and some HVAC was existing and one was added. The design of the roof did not change from existing & the Starbucks & gas station that are adjacent have no railing or platform around their rooftop units. Requiring us to add this now, would possibly force us into closure as we cannot afford to add something to this existing business that clearly was not a requirement when the adjacent tenants did their build out. .

**8. DEMONSTRATION THAT PUBLIC HEALTH, SAFETY, AND WELFARE WILL BE PROTECTED**

Select one of the following statements:

- Non-compliance with the rule will not be adverse to the public health, safety or welfare; or
- Applicant will undertake alternative actions in lieu of compliance with the rule to ensure that granting of the variance will not be adverse to public health, safety, or welfare. Explain why alternative actions would be adequate *(be specific)*.

Facts demonstrating that the above selected statement is true:

Ok for Temporary Certificate of Occupancy

**9. DEMONSTRATION OF UNDUE HARDSHIP OR HISTORICALLY SIGNIFICANT STRUCTURE**

Select at least one of the following statements:

- Imposition of the rule would result in an undue hardship *(unusual difficulty)* because of physical limitations of the construction site or its utility services.
- Imposition of the rule would result in an undue hardship *(unusual difficulty)* because of major operational problems in the use of the building or structure.
- Imposition of the rule would result in an undue hardship *(unusual difficulty)* because of excessive costs of additional or altered construction elements.
- Imposition of the rule would prevent the preservation of an architecturally or a historically significant part of the building or structure.

Facts demonstrating that the above selected statement is true:

**10. STATEMENT OF ACCURACY**

I hereby certify under penalty of perjury that the information contained in this application is accurate.

Signature of applicant or person submitting application

Please print name

Date of signature *(month, day, year)*

Jon Aiello

02/27/2018

Signature of design professional *(if applicable)*

Please print name

Date of signature *(month, day, year)***11. STATEMENT OF AWARENESS *(If the application is submitted on the applicant's behalf, the applicant must sign the following statement.)***

I hereby certify under penalty of perjury that I am aware of this request for variance and that this application is being submitted on my behalf.

Signature of applicant

Please print name

Date of signature *(month, day, year)*

Roger Distler

02/27/2018



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

ROGER DISTLER  
 SEE USA LLC/SIC INC.  
 PO BOX 534

September 11, 2017

CAYUGA, IN 47928

Dear ROGER DISTLER,

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 September 7, 2017.

Project Number	Project Name	Variance Number
	FAZOLIS	17-08-05

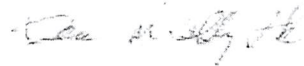
Commission Conditions

Edition	Code	Code Section	Commission Action & Date	
ANSI 1771		904	Tabled	09/07/2017
ANSI 1771		308	Tabled	09/07/2017

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,



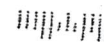
Dean Illingsworth  
State Building Law Compliance Officer,  
Department of Homeland Security

IN Dept of Homeland Security  
Code Services  
302 W. Washington Street Rm E-241  
Indianapolis IN 46204

INDIANAP  
IN 460  
12 SEP '17  
PM 2 1

Roger Distler  
See USA LLC/SIC Inc.  
PO Box 534  
Cayuga, IN 47928

47928-053434





ERIC J. HOLCOMB, Governor  
**STATE OF INDIANA**

DEPARTMENT OF HOMELAND SECURITY

**BRYAN J. LANGLEY, EXECUTIVE DIRECTOR**

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

ROGER DISTLER  
SEE USA LLC/SIC INC.  
PO BOX 534

September 11, 2017

CAYUGA, IN 47928

Dear ROGER DISTLER,

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 September 7, 2017.

Project Number	Project Name	Variance Number
	FAZOLIS	17-08-05

**Commission Conditions**

Edition	Code	Code Section	Commission Action & Date
ANSI 1771		308	Tabled 09/07/2017

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.



November 14, 2017

J&K FFFI 3 LLC  
Attn: Jon Aiello  
315 US HWY 31 South  
Greenwood, IN 46142

RE: 2016-804

## FINAL NOTICE

To Whom It May Concern:

The Town of Zionsville Planning Department has conducted a monthly audit of our permit files. Our documentation reflects a *Temporary Certificate of Occupancy* for the Improvement Location Permit number (2016-804), issued to (J&K FFFI 3 LLC) at 6378 Crane Drive, expired without receiving a full Certificate of Occupancy.

It was noted on the Final inspection report a re-inspection of the project was required prior to (June 1, 2017) for the following item(s):

- See Final inspection report dated 2/23/2017

Please be advised, you shall have five (5) business days from the date of this letter to fill out the attached Permit Extension form and return to the Town of Zionsville Planning Department by either emailing it to Mindy Klinedinst at [mklinedinst@zionsville-in.gov](mailto:mklinedinst@zionsville-in.gov) or mailing it to 1100 West Oak Street, Zionsville, IN 46077 for an Improvement Location Permit extension. After review of the project file, staff may require an inspection of this project prior to determining the length of extension granted.

Please feel free to contact our office if you have questions at (317) 873-8247.

Respectfully,

Michael Lathrop  
Building Inspector  
[mlathrop@zionsville-in.gov](mailto:mlathrop@zionsville-in.gov)  
317-873-8248

Cc: Department Director  
File

Reference: Town of Zionsville Zoning Ordinance Section 194.216 - Improvement Location Permit



ERIC J. HOLCOMB, Governor  
**STATE OF INDIANA**

DEPARTMENT OF HOMELAND SECURITY

**BRYAN J. LANGLEY, EXECUTIVE DIRECTOR**

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

ROGER DISTLER  
SEE USA LLC  
295 HARRISON CT

May 2, 2018

DANVILLE, IN 46122

Dear ROGER DISTLER,

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 May 1, 2018.

Project Number	Project Name	Variance Number
	FAZOLIS	18-05-04

**Commission Conditions**

Edition	Code	Code Section	Commission Action & Date
IMC		403	Tabled 05/01/2018

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,



Craig E. Burgess  
Indiana State Building Commissioner,  
Department of Homeland Security



ERIC J. HOLCOMB, Governor  
STATE OF INDIANA

DEPARTMENT OF HOMELAND SECURITY

BRYAN J. LANGLEY, EXECUTIVE DIRECTOR

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

ROGER DISTLER  
SEE USA LLC  
295 HARRISON CT

June 7, 2018

DANVILLE, IN 46122

Dear ROGER DISTLER,

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 June 5, 2018.

Project Number	Project Name	Variance Number
	FAZOLIS	18-05-04

Commission Conditions

Edition	Code	Code Section	Commission Action & Date
2014	IMC 403	306.5.1; 306.5	Tabled 06/05/2018

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.



ERIC J. HOLCOMB, Governor  
**STATE OF INDIANA**

DEPARTMENT OF HOMELAND SECURITY

BRYAN J. LANGLEY, EXECUTIVE DIRECTOR

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

ROGER DISTLER  
 SEE USA LLC  
 295 HARRISON CT

July 10, 2018

DANVILLE, IN 46122

Dear ROGER DISTLER,

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 July 3, 2018.

Project Number	Project Name	Variance Number
	FAZOLIS	18-05-04

**Commission Conditions**

Edition	Code	Code Section	Commission Action & Date
2014	IMC 403	306.5.1; 306.5	Tabled 07/03/2018

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.



ERIC J. HOLCOMB, Governor  
**STATE OF INDIANA**

DEPARTMENT OF HOMELAND SECURITY

**BRYAN J. LANGLEY, EXECUTIVE DIRECTOR**

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

ROGER DISTLER  
SEE USA LLC  
295 HARRISON CT

August 9, 2018

DANVILLE, IN 46122

Dear ROGER DISTLER,

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 August 7, 2018.

Project Number	Project Name	Variance Number
	FAZOLIS	18-05-04

**Commission Conditions**

Edition	Code	Code Section	Commission Action & Date
2014	IMC 403	306.5.1; 306.5	Not Approved 08/07/2018

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.

IN Dept of Homeland Security  
Code Services  
400 W. Washington St. Rm E-241  
Indianapolis IN 46204

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ZIP 46241  
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Roger Distler

SEE USA, LLC/SIC, Inc.

295 Harrison Ct.

Danville IN 46122

46122-195795

