



REQUEST FOR CONSIDERATION
OF
UNTIMELY FILED VARIANCE APPLICATION

1. Name of Applicant: REM YODER

2. Date of Filing: 04-25-2019

3. Prejudice Claimed (mark all that apply)

a. Excessive loss of time: X

b. Unreasonable Cost: X



4. Evidence Supporting Claim of Prejudice (please attach copies of all supporting documentation)

The reason this variance request is urgent is the city of Nappanee notified us last Thursday, the distance of the stair protrusion into the alley was unacceptable. We were unable to file a variance request on the 18th of April as we were still investigating solutions to the issue.

The restaurant plans to open prior to the hearing in June so without an approved variance, the opening would need to be postponed, resulting in lost revenue and a financial hardship for the restaurant. For this reason we respectfully request this variance be heard and approved May 9th.

By submitting this form, I swear that the information provide above is true and accurate.

Rem Yoder
Signature

Approved 5/1/19 for
FPBSC's 5/9/19 meeting.
- DJB

Boyle, Douglas J (DHS)

From: Boyle, Douglas J (DHS)
Sent: Wednesday, May 1, 2019 9:43 AM
To: Melissa Tupper
Cc: Denise Fitzpatrick (dfitzpatrick@dhs.IN.gov)
Subject: RE: Ruhe 152 19387

Melissa,

I have reviewed the additional information provided by Mr. Tuttle. I appreciate the amount of detail he went into in providing this information. Obviously, it is clear that Mr. Tuttle will be greatly prejudiced by both an excessive loss of time and unreasonable financial hardship compounded by the loss of time if he were required to wait until the Commission's June 4, 2019 meeting to address what appears to be a final variance request to bring this project to completion. As such, I approve this late filing request. Please advise Mr. Tuttle this variance 19387 will be placed on the Commission's agenda for the Thursday, May 9, 2019 meeting. Denise, please go ahead and process variance 19387 for the May 9th agenda.

Thanks,

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
Tel: (317) 650-7720
Email: DoBoyle@dhs.in.gov
Web: www.in.gov/dhs



From: Melissa Tupper [mailto:tupper@rtmconsultants.com]
Sent: Tuesday, April 30, 2019 1:38 PM
To: Boyle, Douglas J (DHS) <DoBoyle@dhs.IN.gov>
Subject: RE: Ruhe 152 19387
Importance: High

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

Doug,

See attached email from the owner with more specifics on the hardship. Thank you.

If you have any questions, please contact us.

Sincerely,

Melissa M. Tupper, P.E.
Principal
Fire Protection Engineer

RTM Consultants, Inc.
6640 Parkdale Place, Suite J
Indianapolis, IN 46254

(317) 329-7700 ext 104
(317) 329-8411 fax

From: Boyle, Douglas J (DHS) <DoBoyle@dhs.IN.gov>
Sent: Monday, April 29, 2019 11:42 AM
To: Melissa Tupper <tupper@rtmconsultants.com>
Subject: RE: Ruhe 152 19387

Melissa,

I have received your late filing request for the above-listed variance application. In review of the late filing request, can you and your client provide more **specific and reliable evidence** regarding the prejudice claimed due to both excessive loss of time and unreasonable costs? What date is the restaurant expected to open, if not for the additional variance and needed permits? Can you and your client provide any estimates as far as the expected revenue that will be lost, if the Commission does not review the variance application until it's June 4, 2019 meeting? If you can provide more substantive evidence and supporting documentation, as required by the Commission's non-rule policy, I will be amenable to approving the late filing request. Please let me know if you have any questions.

Sincerely,

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
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From: Melissa Tupper [<mailto:tupper@rtmconsultants.com>]
Sent: Monday, April 29, 2019 8:19 AM
To: Boyle, Douglas J (DHS) <DoBoyle@dhs.IN.gov>
Subject: Fwd: Ruhe 152 19387

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Doug,

The variance we are requesting a late filing for is green. Please see below. Thank you.

Sent from my iPhone

Begin forwarded message:

From: Judy Stinnett <judy@rtmconsultants.com>
Date: April 29, 2019 at 7:52:38 AM EDT
To: Melissa Tupper <tupper@rtmconsultants.com>
Subject: Ruhe 152 19387

<p>19387 (Online) Application Date:04/26/2019 Name Ruhe 152 Stair 4 Modification.pdf Date:04/26/2019 View Plan Name Ruhe 152 Drawings.pdf Date:04/26/2019 View Plan Name City of Nappanee Supporting Letters.pdf Date:04/26/2019 View Plan Name Ruhe 152 LFO Email.pdf Date:04/26/2019 View Plan Name Ruhe 152 Photo of Old 30 inch Fire Escape at Alley .JPG Date:04/26/2019 View Plan</p>	<p>Ruhe 152 152 W Market St NAPPANEE 46550 [view application in html] [view app in pdf for IE] Ready for IDHS processing! LFO acknowledgement received! LBO acknowledgement received!</p>
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Boyle, Douglas J (DHS)

From: Scott Tuttle <scott.t@scotttuttle.com>
Sent: Monday, April 29, 2019 9:13 PM
To: 'Rem Yoder'; Melissa Tupper
Subject: RE: Ruhe 152 19387

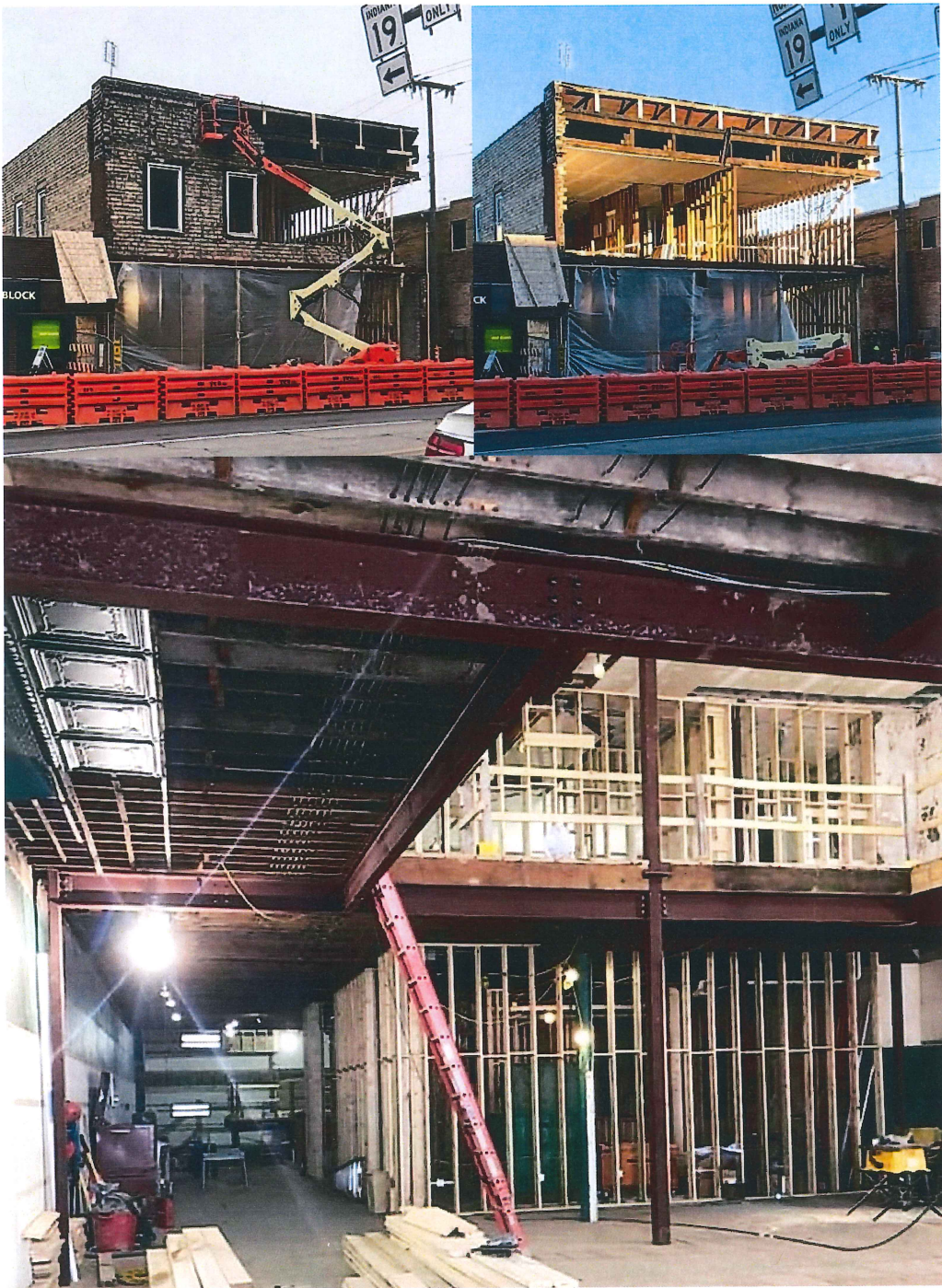
Follow Up Flag: Follow up
Flag Status: Flagged

Rem,
Cc: Melissa Tuper

The main financial hardships we face are fairly simple and centered around us not being able to generate any income for an additional month after we have already endured six months of delays and spent nearly \$4 million trying to wrap this project up. Every day that goes by that we do not have any revenue coming in puts this entire project in danger of failing because we continue to incur very large bills with no revenue coming in. I cannot stress enough that each and every day that passes without opening has a bearing on the solvency of this project.

Regarding this specific variance application, we hope that will take into consideration that we purchased a 100 year building and completely rebuilt most of it due to it being structurally unsound which was neither shared by the previous owner, nor caught by previous code inspectors. Imagine our shock when the engineers informed us that this building, which was deemed to be up to code by the City and the State needed additional structural support under the main floor to be occupied; required additional structural support for the second floor to be occupied; and required additional structural support for the roof to hold HVAC equipment. What was supposed to be a remodel project turned into a tear down and rebuild project. We had to add or replace major portions of the structure of the building as evidenced in these photos.





Another big challenge was the City discovering that while all of their drawings showed a sewer line ran just to the North of our building, and we designed and installed all of the buildings plumbing (including for all of the brewery) to run to that line. The problem was, that line did not exist. It turned out that the City's decades old drawings were wrong. That caused us to incur further delays and additional costs.

To top things off, the company that we ordered our distillery equipment from, though having a good track record and being in business for 15 years, filed for bankruptcy just weeks before the equipment was scheduled to be installed leaving us high and dry. Not only did we lose our \$35,000 down

payment, we had to scramble to find a replacement system in under three weeks to fit into a very tight time frame before the floor would be closed up.

In terms of specific hardship if we have to wait an additional month to get this variance:

- We estimate that each day that we are not open, we will be losing approximately \$8,000.00 to \$10,000.00 in revenue. That equates to between \$240,000 and \$300,000 for an entire month if we would have to wait for the next variance hearing. Losing that amount versus bringing in that amount represents a nearly half a million dollar swing to the negative. That would just not be sustainable for us and would put the entire project that we have worked so hard and diligently on for over 1 year in jeopardy.
- That Further details on the hardship that delaying our opening any more will bring are seen in our staff and their salaries. When we started this project, we were expecting to open in late 2018. Because of circumstances beyond our control, we are now hoping to open on June 14th, which is six months later than planned. The financial hardship discussion centers here - with the extreme late opening of our establishment. To say investing nearly \$4 million is rare in a small Northern Indiana downtown without any outside or Governmental help would be an understatement. Knowing that we wanted our establishment to be worth the trip as a destination location, we knew that we needed to hire the best possible management. We did that in each of our three key management employees, Christina Gilbert (GM); David Michael (Head Brewer) and Jack Godwin (Executive Chef). Since we were planning on opening in December of 2018, we actually brought these people on at decreased salaries to help us finalize and perfect plans for the restaurant and brewery. This was in mid 2018. We have the best of the best, but we have paid, and continue to pay to keep this talent as our construction has continued to stretch out. Yet, even these fine people are being stretched thin in their finances and yet another 30 day delay could result in us losing one of these fine employees to one of the many offers they have received from other, larger establishments in the last 120 days. That would be devastating to our business.

The previous restaurant/bar that this building housed which was not sprinkled and what we have now discovered, had a rear exit stairway that was too narrow to meet code. We bit the bullet and rebuilt the building. We paid the money to sprinkle all three floors of the new building. And when we went to put a rear stairway exit in place to replace the old, rusty one that was falling apart, we were told that it was "too wide" and intruded too far into the adjacent alley. But to make it any less in width would be against the State Code. So we are in between a rock and a hard place.

At the end of the day, we through ourselves on the mercy of the Fire Prevention and Building Safety Commission – as well as appeal to your good senses as we ask you to please allow this variance so that we can finally get this business open and running so, start paying on the many bills that we have accumulated, and start to make the people of this region happy with our food and services.

Thank you.

Sincerely,
Scott Tuttle

Owner, RUHE152

From: Rem Yoder <ryoder@djconstruction.com>
Sent: Monday, April 29, 2019 3:40 PM
To: scott.t@scotttuttle.com
Subject: FW: Ruhe 152 19387
Importance: High

Scott, See below from Doug Boyle. I basically said we need to be heard in May because the restaurant opening would be delayed if the variance wasn't heard until June. That might be a stretch if you have gentlemen's agreement with the city so I just need your help with some financial hardship data and your proposed opening date to keep pressure on the state to hear this in May.

Otherwise we'd need to let them know we'll just wait until the June hearing. Thanks.

Rem Yoder

Project Manager

DJ Construction Co., Inc.

Phone 574.533.1645 Cell 317.363.3830

From: Melissa Tupper <tupper@rtmconsultants.com>
Sent: Monday, April 29, 2019 11:46 AM
To: Rem Yoder <ryoder@djconstruction.com>
Subject: FW: Ruhe 152 19387
Importance: High

Rem,

See email from state below. Can you provide me with answers to his questions ASAP? Thank you.

If you have any questions, please contact us.

Sincerely,

Melissa M. Tupper, P.E.
Principal
Fire Protection Engineer

RTM Consultants, Inc.
6640 Parkdale Place, Suite J
Indianapolis, IN 46254

(317) 329-7700 ext 104
(317) 329-8411 fax

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Indiana Department of Homeland Security
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DON LEHMAN
Fire Chief
dlehman@nappanee.org

April 25, 2019

IDHS
Fire Prevention and Building Safety Commission
302 W. Washington Street
Indianapolis, IN 46204

RE:Ruhe @ 152 Variance Request

Dear Commission;

This letter is being written in support of Ruhe @ 152 located at 152 W. Market Street, Nappanee, Indiana in seeking a variance for a second exit stairway to be less than the 44 inches required by IBC 1009.4.

Ruhe @ 152 purchased this building that was originally constructed in the early 1900's and over the past several months has been remodeling this building.

Recently it was determined that the stairway for a second exit, if constructed as planned, would encroach into a public alley causing a traffic hazard to not only vehicles but also patrons of the business.

I would be in support of the variance for the second exit stairway of 40 inches for reasons listed:

- There is no change in occupancy with the remodeling of this building.
- The building has been upgraded with a sprinkler system.
- The original stairway exit was approximately 30 inches wide.
- 40 inch wide stairway would reduce the encroachment into the alley making it less likely to be hit and damaged which would result in the necessity of closing the business until the damage is repaired.
- This exit would be considered an emergency exit only would only have occupants leaving in one direction.

Thank you considering this variance.

Sincerely,

Don Lehman, Fire Chief
Planning/Zoning Administrator
City of Nappanee

300 West Lincoln Street • P.O. Box 29 • Nappanee, IN 46550-0029
574.773.2112 • www.nappanee.org

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Home of the Smokey Stovers



PHIL JENKINS
Mayor
pjenkins@nappanee.org

April 25, 2019

Indiana Department of Homeland Security
Fire Prevention and Building Safety Commission
302 W. Washington Street
Indianapolis, IN 46204

RE: Ruhe @ 152 Variance Request

Dear Commission,

I, Mayor Phil Jenkins, of the City of Nappanee, Indiana, offer this letter in support for the variance request made by Ruhe @ 152 to reduce the second exit stairway width to be less than 44 inches required by Indiana Building Code (IBC) 1009.4.

The stairway in question encroaches into the City of Nappanee's Alley Right-of-Way. We, as the City, have been in communication with Ruhe @ 152 to try to reduce the encroachment and feel a variance to the width of the stairway is a viable option. By allowing the variance, we can minimize the impact to the City's alley, while still providing safe exit from the building in the event of an emergency. Ruhe @ 152 has made a significant investment in an existing downtown building and has made several improvements that have increased the structural stability, improved life safety, and enhanced the aesthetic appeal of the building.

If the Commission grants the variance, I will follow the appropriate legal steps to obtain approval from the Board of Public Works for the encroachment into the alley.

Sincerely,

Philip W. Jenkins

Embrace the Place

300 West Lincoln Street • P.O. Box 29 • Nappanee, IN 46550-0029
574.773.2112 • www.nappanee.org

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