

Joe Lombardo
Governor



Richard Whitley,
MS
Director

**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**

 **NEVADA DIVISION of PUBLIC
and BEHAVIORAL HEALTH**



Cody Phinney,
MPH
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical
Officer

MEMORANDUM

DATE: April 14, 2024
TO: Jon Pennell, DVM, Chairperson, State Board of Health
THROUGH: Cody Phinney, Secretary, State Board of Health
RE: Case # 766, Grewal Enterprises DBA Subway Battle Mountain

Nevada Administrative Code (NAC) 446.421(2) – (3) states:

2. “Except as otherwise provided in subsection 3, a food establishment that provides public seating must have separate rooms with toilets for males and females. As used in this subsection, “public seating” includes seats, benches, stools and similar furniture provided by the owner or operator of a building, mall or similar operation for use by the food establishment and located within 25 feet of the establishment.”
3. “If, in the judgment of the health authority, no risk to public health will be created and if site restrictions or architectural or historical preservation restrictions make the installation of two toilet rooms infeasible within the building, the food establishment may be permitted to install one toilet room for use by males, females and employees, provided that the total seating affiliated with the establishment, as described in subsection 2, does not exceed 15 total seats.”

STAFF REVIEW

Grewal Enterprises DBA Subway submitted a request for variance from the requirements of NAC 446.421(2) – (3) on March 26, 2024. Grewal Enterprises is requesting approval to permanently operate with only one restroom, despite having 40 seats at the restaurant.

Grewal Enterprises purchased the facility from Melver Enterprises previously approved Variance Case # 707 for the same requirements of NAC 446.421(2)-(3). The subject food establishment was built in early 2020 following full plan review by the Environmental Health Section of the Division of Public and Behavioral Health (DPBH-EHS). The staff member reviewing plans did not consider the provisions of NAC 446.421 and approved construction of the food establishment with 40 seats and only a single toilet room.

The food establishment has a moderately low-risk menu consisting primarily of cold sandwiches prepared to order for consumption off-site. Despite the 40 seats available, it is the opinion of DPBH-EHS staff that the establishment is unlikely to operate at full capacity for extended periods of time.

Additionally, the Board has adopted by reference the Uniform Plumbing Code (UPC) in the most recent edition. Per Table 422.1 of the 2021 UPC, one toilet is acceptable for an establishment of this size. The Lander County Building Department approved the plans for construction under equivalent local regulations.

INTENT OF THE REGULATION

NAC 446.421 requires separate restrooms for males and female when consumption of food and drinks occurs on-site and more than 15 seats are provided. The intent of the regulation is to ensure patrons have access to sanitary toilet and hand washing facilities before returning to the public areas and eating. Access to toilets and hand washing facilities has a two-fold purpose:

1. Ensure proper disposal of human waste, which carries pathogens, and prevent the spread of disease by flies and other insects.
2. Prevent transmission of disease by the fecal-oral route throughout the establishment by unclean hands.

The health reasoning for the number of toilets is based on the capacity of the food establishment and projected use or demand for the toilet by the public when at capacity.

DEGREE OF RISK TO PUBLIC HEALTH

There is little to no risk to the public health in allowing Grewal Enterprises dba Subway to operate with only a single restroom. During peak occupancy, it is possible that customers and staff may need to wait for the toilet if it is occupied. However, the nature of the restaurant lends itself to serving and selling a large percentage of its food to-go rather than for dine-in. When customers do eat onsite it is often for shorter periods of time than at fine dining restaurants or bars, which further reduces demand for two toilet rooms.

Additionally, there is no public health rationale for the requirement of separate toilets for exclusive use by either males or females, as long as the facilities are available when needed. This provision is no longer in the 2017 edition of the Model Food Code published by the US Department of Health & Human Services, the national standard for food safety regulations.

EXCEPTIONAL AND UNDUE HARDSHIP

Grewal Enterprises dba Subway states that strict application of NAC 446.421 would cause an exceptional financial hardship. Denial of the variance application would require Grewal Enterprises dba Subway to build a second bathroom. Grewal Enterprises has not obtained or provided a quote to the cost to build an additional restroom.

PUBLIC COMMENT RECEIVED

Notice of the hearing is scheduled to be posted on the Division of Public & Behavioral Health website at <http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/> and at the 4150 Technology Way office in Carson City, NV by May 8, 2024. The Division of Public & Behavioral Health is not aware of any objections to this variance by any local authorities, and no public comments have been received to date.

STAFF RECOMMENDATION

DPBH staff recommend the State Board of Health approve Grewal Enterprises Case #, Grewal Enterprises dba Subway's request for a variance to NAC 446.421(2) & (3), with the following conditions:

- Grewal Enterprises dba Subway must ensure that if the single toilet facility at any time fails or becomes otherwise inoperable that the food establishment immediately cease operation, close for business and notify DPBH-EHS.
- If the food establishment closes due to failure or inoperability of the toilet facility, it must remain closed until DPBH-EHS approves the food establishment to reopen.
- If the establishment is sold or re-purposed and no longer operates as a Subway restaurant under the ownership of Grewal Enterprises, the variance will be automatically terminated and the new operation and/or owner will need to submit their operational plans and apply for a new variance from the Board of Health.

PRESENTER

Teresa Hayes, Health Program Manager III, Environmental Health Section, DPBH

BEFORE THE STATE BOARD OF HEALTH

IN THE MATTER OF)
GREWAL ENTERPRISES, dba SUBWAY)
VARIANCE REQUEST: CASE # 766)

The Nevada State Board of Health (“Board”), having considered the application for a variance and all other related documents submitted in support of the application in the above referenced matter, makes the following Findings of Fact, Conclusions of Law, and Decision.

FINDINGS OF FACT

1. On March 26, 2024, the Division of Public & Behavioral Health (“Division”) received a request for variance from NAC 446.421(2) & (3).
2. NAC 446.421 (2) states: “Except as otherwise provided in subsection 3, a food establishment that provides public seating must have separate rooms with toilets for males and females.”
3. NAC 446.421 (3) states: “If, in the judgment of the health authority, no risk to public health will be created and if site restrictions or architectural or historical preservation restrictions make the installation of two toilet rooms infeasible within the building, the food establishment may be permitted to install one toilet room for use by males, females and employees, provided that the total seating affiliated with the establishment, as described in subsection 2, does not exceed 15 total seats.”
4. Grewal Enterprises purchased the facility from Melver Enterprises previously approved Variance Case # 707.
5. Grewal Enterprises dba Subway is requesting allowance to operate with 1 toilet room, despite having 40 seats. The intent of the regulation is to ensure sanitary conditions for persons who may need to use the restroom, a sanitary way to use a toilet and wash hands before returning to the public areas and eating. The purpose of the regulation is to ensure proper disposal of human waste, which carries pathogens, prevent the spread of disease by flies and

other insects, and prevent transmission of disease by the fecal-oral route throughout the establishment by unclean hands.

6. The public health rationale for the number of toilets is based on the capacity of the food establishment and projected use or demand for the toilet by the public when at capacity. There is no public health rationale for the requirement of separate toilets for exclusive use by either males or females, as long as the facilities are available when needed.

7. A single restroom is consistent with the requirements of Table 422.1 of the 2021 Uniform Plumbing Code, which prescribes a minimum number of fixtures that should be available at various types of public venues. The Lander County Building Department approved the opening and operation of the restaurant with a single restroom under local regulations consistent with the Uniform Plumbing Code.

8. The DPBH - EHS Office completed a plan review and issued approval for construction for the restaurant to be built with just one restroom.

CONCLUSIONS OF LAW

1. This matter is properly before the board pursuant to NRS 439.200 and determination of the matter on the merits is properly within the subject matter jurisdiction of the board.

2. NRS 439.200 provides:

The State Board of Health may grant a variance from the requirements of a regulation if it finds that:

a. Strict application of that regulation would result in exceptional and undue hardship to the person requesting the variance; and

b. The variance, if granted would not:

1. Cause substantial detriment to the public welfare; or

2. Impair substantially the purpose of the regulation.

3. The board finds that strict application of the regulation would cause an undue hardship. Grewal Enterprises would incur excessive costs to add an additional toilet room at this time.

4. The Board finds that granting this variance would not cause substantial detriment to the public welfare; or impair substantially the purpose of the regulation.

5. As a condition of this variance, Grewal Enterprises dba Subway agrees to ensure that if the single toilet facility at any time fails or becomes otherwise inoperable that the food establishment immediately cease operation, close for business and notify DPBH-EHS. If the food establishment closes due to failure or inoperability of the toilet facility, it must remain closed until DPBH-EHS approves the food establishment to reopen.

6. This variance will be revoked if Grewal Enterprises dba Subway changes the operations of the establishment to increase on-site dining, undergoes a substantial remodel. This variance is not transferable and will be void if the firm is sold to a new operator.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause appearing, therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the variance to NAC 446.421 be GRANTED.

DATED this _____ day of _____, 2024.

Cody Phinney, Secretary

Nevada State Board of Health

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Department of Health & Human Services, Division of Public & Behavioral Health, and that on the _____ day of _____, 2024, I served the foregoing FINDINGS OF FACTS AND DECISION by mailing a copy thereof to:

Mr. Navneet Kaur
720 S Broad St.
Battle Mountain Nevada, 89820

Joe Lombardo
Governor



Richard Whitley,
MS
Director



Cody Phinney,
MPH
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical
Officer

NOTICE OF PUBLIC HEARING

GREWAL ENTERPRISES dba SUBWAY 720 S BROAD ST BATTLE MOUNTAIN NEVADA 89820 IS REQUESTING A VARIANCE, # 766, FROM THE NEVADA STATE BOARD OF HEALTH REGULATIONS.

NOTICE IS HEREBY GIVEN that GREWAL ENTERPRISES dba SUBWAY 720 S BROAD ST BATTLE MOUNTAIN NEVADA 89820 has requested a variance from Nevada Administrative Code (NAC) 446.421(2) – (3) “Toilets”.

A public hearing will be conducted on JUNE 7, 2024, at 9:00 am by the Nevada State Board of Health to consider this request. This meeting will be held in person and online.

Meeting Locations:

- Southern Nevada Health District (SNHD)
Red Rock Trail Rooms A and B
280 S. Decatur Boulevard; Las Vegas, Nevada 89107
- Nevada Division of Public and Behavioral Health (DPBH)
Hearing Room No. 303, 3rd Floor
4150 Technology Way; Carson City, Nevada 89706

Join from a computer using the Microsoft Teams meeting link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2E0OWNkNzUtNGU2NC00NjJjLTk0NTEtODRmZDIyZjFhNjRl%40thread.v2/0?context=%7b%22id%22%3a%22e4a340e6-b89e-4e68-8eaa-1544d2703980%22%2c%22oid%22%3a%22faba961c-6d7e-488b-8c7c-60c19eff2cbd%22%7d

Join by Phone:

1-775-321-6111

Phone Conference ID Number:

GREWAL ENTERPRISES dba SUBWAY 720 S BROAD ST BATTLE MOUNTAIN NEVADA 89820, is requesting a variance from NAC 446.421(2)-(3) which states:

2. "Except as otherwise provided in subsection 3, a food establishment that provides public seating must have separate rooms with toilets for males and females. As used in this subsection, "public seating" includes seats, benches, stools and similar furniture provided by the owner or operator of a building, mall or similar operation for use by the food establishment and located within 25 feet of the establishment."
3. "If, in the judgment of the health authority, no risk to public health will be created and if site restrictions or architectural or historical preservation restrictions make the installation of two toilet rooms

infeasible within the building, the food establishment may be permitted to install one toilet room for use by males, females and employees, provided that the total seating affiliated with the establishment, as described in subsection 2, does not exceed 15 total seats.”

The authority of the State Board of Health to consider and grant a variance from the requirements of a regulation is set forth at NRS 439.200 and NAC 439.200 – 439.280.

Persons wishing to comment upon the proposed variance may appear at the scheduled public hearing or may submit written testimony at least five days before the scheduled hearing to:

Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Anyone wishing to testify for more than five minutes on the proposed variance must petition the Board of Health at the above address. Petitions shall contain the following: 1) a concise statement of the subject(s) on which the petitioner will present testimony; 2) the estimated time for the petitioner’s presentation.

This notice has also been posted at the following locations:

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH (DPBH), 4150 TECHNOLOGY WAY, CARSON CITY, NV
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH WEBSITE:

<http://dpbh.nv.gov/Boards/BOH/Meetings/Meetings/>



NEVADA STATE BOARD OF HEALTH
4150 Technology Way, Suite 300 CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Please check the appropriate box that pertains to the NAC for which you are requesting a variance.

Division Administration
(NAC 439, 441A, 452, 453A, & 629)

Health Care Quality & Compliance
(NAC 449, 457, 459 & 652)

Child, Family & Community Wellness
(NAC 392, 394, 432A, 439, 441A, & 442)

Office of State Epidemiology
(NAC 440, 450B, 452, 453, 453A, & 695C)

Public Health & Clinical Services
(NAC 211, 444, 446, 447, 583, & 585)

Date: 02/27/24

Name of Applicant: NAVNEET KAUR

Phone: 775-666-3395

Mailing Address: 720 S Broad St.

City: BATTLE MOUNTAIN

State: NV

Zip: 89820

We do hereby apply for a variance to chapter/section NAC-446.421 of the Nevada Administrative Code (NAC). (For example: NAC 449.204)

Title of section in question:

TOILETS

Statement of existing or proposed conditions in violation of the NAC:

Subway Restaurant constructed with only one restroom. Although it provides 40 seats, and NAC 446.421 (2) states, "2. Except as otherwise provided in subsection 3, a food establishment that provides public seating must have separate rooms with toilets for males & females." However Section 3 allows a single bathroom if there are fewer than 15 seats and no health hazard would exist.



NEVADA STATE BOARD OF HEALTH
4150 Technology Way, Suite 300 CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Date of initial operation (if existing): 06/15/2022

ATTENTION: Please read this section closely. Your request for variance will be examined against these criteria:

Any person who, because of unique circumstances, is unduly burdened by a regulation of the State Board of Health and thereby suffers a hardship and the abridgement of a substantial property right may apply for a variance from a regulation. (NAC 439.200(1))

1. The State Board of Health will grant a variance from a regulation only if it finds from the evidence presented at the hearing that:
 - (a) There are circumstances or conditions which:
 - (1) Are unique to the applicant;
 - (2) Do not generally affect other persons subject to the regulation;
 - (3) Make compliance with the regulation unduly burdensome; and
 - (4) Cause a hardship to and abridge a substantial property right of the applicant; and
 - (b) Granting the variance:
 - (1) Is necessary to render substantial justice to the applicant and enable him to preserve and enjoy his property; and
 - (2) Will not be detrimental or pose a danger to public health and safety.

2. Whenever an applicant for a variance alleges that he/she/they suffers or will suffer economic hardship by complying with the regulation, they must submit evidence demonstrating the costs of compliance with the regulation. The Board will consider the evidence and determine whether those costs are unreasonable. (NAC 439.240)

Therefore, it is important for your variance request to be as complete as possible. It is your responsibility to attach documentation supporting your variance request.

Statement of degree of risk of health

There is little to no risk of health caused by providing only one restroom.

Upon opening, I (the owner agreed to the terms of section 4 of NAC 446.421, which states that, if at any time the bathroom fails or becomes inoperable, the store will close and notify the health authority and will remain closed until approved to reopen. The only affect may be that customers may need to wait if the bathroom is in use before they may access it.



NEVADA STATE BOARD OF HEALTH
4150 Technology Way, Suite 300 CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

Please state in detail the circumstances or conditions which demonstrate that:

- 1. An exceptional and undue hardship results from a strict application of the Regulation:

The Elko EHS Office, REHS Scott Burt approved the floor plans of the Subway with only one bathroom during the plan review, in Aug/Sept 2019 prior to the construction to the building. If two restrooms were required, this should have been required and outlined in the plan review, to minimize construction costs. At the pre-opening inspection, in May 2020 EHS management approved the Subway to open with one restroom. Therefore EHS had the opportunity to require 2 bathrooms did not. To require a new bathroom be constructed now would be an undue hardship. It would be very expensive due to an error by EHS staff review.

- 2. The variance, if granted, would not:

A. Cause substantial detriment to the public welfare.

Upon opening, I agreed to the terms of section 4 of NAC 446.421, which states that, if at any time the bathroom fails or becomes inoperable the store will close and notify the health authority and will remain closed until approved to reopen. The only affect may be needing to wait for the bathroom if occupied. In fact, NAC 446.421 even allows for just one bathroom if it is deemed there is no public health risk, and if there were structural reasons and less than 15 seat provided in total. While there are more than 15 seats, the nature of the restaurant, a Subway, lends itself to serving and selling most sandwiches to-go and to shorter dining in times, lessening the need for two separate bathrooms.

B. Impair substantially the purpose of the regulation from which the application seeks a variance.

Section 4 of the NAC 446.421 would still be followed, making sure the restaurant is only opened if the single bathroom is operational. The main purpose of the regulation is to ensure sanitary disposal of waste and ensure there are facilities to maintain the public's health, when they may need to use a restroom. These standards will still be met. Clean toilet facilities are provided and must be accessible to the staff and public.

The bureau may require the following supporting documents to be submitted with and as a part of this application:

Specific Request:

operate with one bathroom



NEVADA STATE BOARD OF HEALTH
4150 Technology Way, Suite 300 CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

- 1. Legal description of property concerned
- _ 2. General area identification map
- _ 3. Plot map showing locations of all pertinent items and appurtenances
- _ 4. Well log (if applicable)
- _ 5. Applicable lab reports
- _ 6. Applicable engineering or construction/remodeling information
- _ 7. Other items (see following pages)

This application must be accompanied by evidence demonstrating the costs of your compliance with regulations or specific statutory standards. Your request will be placed on the Board of Health agenda 40 days or more after receipt in this office if accompanied by the required fee (NAC 439.210). The application and supporting documentation will form the basis for the Division of Public and Behavioral Health staff report and recommendation(s) to the Board. Failure to respond to the above statements may cause the Board to deny consideration of the application at the requested Board meeting.

I am/we are requesting this variance request be placed on the next regularly scheduled Board of Health agenda. It is understood that I/we can attend in person at either physical location in Carson City or Las Vegas or we may attend virtual.

Signature: Neli 3/26/24

Printed Name: NANEE CAK

Title: OWNER

Date: 02/02/24



NEVADA DIVISION of PUBLIC
and BEHAVIORAL HEALTH



NEVADA STATE BOARD OF HEALTH
4150 Technology Way, Suite 300 CARSON CITY, NV 89706

APPLICATION FOR VARIANCE

**PLEASE SUBMIT YOUR APPLICATION FOR VARIANCE BY USING
ANY OF THE FOLLOWING METHODS:**

MAIL TO:

Secretary, Nevada State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

FAX:

775-687-7570

EMAIL:

DPBH@health.nv.gov
StateBOH@health.nv.gov