

Cause No. 03-IIIV

Name: Early Childhood Alliance

Administrative Law Judge: William K. Teeguarden

Date: August 6, 2003

Commission Action: Affirmed

FINDINGS OF FACT

1. The FPBSC is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5 and the IFC apply to this proceeding.
3. The FPBSC is the ultimate authority within the meaning of IC 4-21.5 with respect to the grant or denial of variances.
4. At all times relevant to this proceeding, the Daycare operated a Daycare in Fort Wayne, Indiana.
5. In October of 2002, during a routine fire inspection the SFM cited the Daycare for not having a sprinkler head under a 4 foot high play loft.
6. At issue is a designed 4' x 6' play loft which is 4' high.
7. The building is sprinklered but there is no sprinkler head under the loft.
8. As constructed, the loft is 4' 3/4" x 6'.
9. IFC Section 1003 requires fire-extinguishing systems to comply with NFPA 13.
10. The applicable NFPA 13 section is 4-7.5.3.1 which states "sprinklers shall be installed under fixed obstructions over 4ft. (1.2m) wide such as ducts, desks, cutting tables, and overhead doors."
11. The loft in question exceeds the NFPA standard by 3/4".
12. The Daycare filed for a variance, was denied, and requested administrative review.
13. The Daycare and the SFM agree there is no dispute of facts and therefore this matter can be decided without a hearing.
14. The SFM vigorously enforces this code section because horizontal obstructions can seriously interfere with the sprinkling system and this is a very good point.
15. On the other hand, the key element to the approval of a variance is the amount of increased risk to public safety. See IC 22-13-2-11(b) which provides in part that "(A) Noncompliance with the rule . . . will not be adverse to the public health, safety, or welfare."
16. It is difficult to see where a 3/4" excess over 4' increases any risk to public safety.
17. For that reason, the Variance should be granted.

NONFINAL ORDER

Variance 03-01-4 is hereby granted.

