

Cause #: 02-5V

Name: Pangborn Hall

Administrative Law Judge: William K. Teeguarden

Date: April 11, 2002

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, IC 22-13, 675 IAC 12, and The Indiana Building Code ("IBC") apply to this proceeding.
3. The FPBSC is both the initial granting authority and the ultimate authority with respect to the grant or denial of variances to the IBC.
4. At all times relevant to this proceeding, the University owned and operated a number of residence halls for students in St. Joseph County, Indiana.
5. In the fall of 2001, the University filed variance application 01-12-24 with the FPBSC.
6. The Variance sought relief from section 1004.3.4.3.2.1 of the IBC in conjunction with a large renovation project to the hall.
7. The administrative law judge takes official notice of the minutes of the FPBSC pursuant to IC 4-21.5.3-26(f).
8. On December 4, 2001, the FPBSC denied the Variance.
9. Section 1004.3.4.3.2.1 of the current IBC (1997 UBC) states in part "Doors shall be maintained self-closing or shall be automatic closing by actuation of a smoke detector in accordance with Section 713.2 . . ."
10. The above section applies to doors in exit access corridors.
11. The Variance sought to allow the removal of self closing devices from sleeping rooms and suites in the Hall as part of a renovation project.
12. For equal alternatives, the University provided a quick response sprinkler system which conforms to NFPA 13 and a hardwired automatic smoke detection system.
13. The reason for request deals with actual usage practices by the students.
14. The occupants frequently prop the doors open or disable the self-closing mechanism.
15. Thus for all practical purposes, the openings are unprotected.
16. In a letter of November 6, 2001, the local fire service supported the granting of the Variance.
17. During the prehearing conference in this matter, the LFO reiterated his support.
18. The minutes of the December, 2001, of the FPBSC meeting show a rather bizarre situation with respect to the vote.

19. The first vote taken was on to a motion to deny the Variance and that motion was defeated 6-8. Next, a motion to approve the Variance was defeated 7-8. Finally, a second motion to deny the Variance passed 8-6.
20. The only reason in the minutes for denying the Variance deals with "signals being sent by the Commission on this issue . . ."
21. Were this the first time the FPBSC had dealt with this matter, the idea of setting a precedent of sorts would be important.
22. The problem with this approach, however, is that the FPBSC has recently granted this exact same Variance for 10 other campus housing buildings at the same University.
23. Variance 98-4-9 approved April 7, 1998, allowed the removal of self-closing devices from the room doors in Keough Hall, O'Neill Hall, McGlynn Hall, Morrisey Hall, and Welsh Hall.
24. Variance 00-2-23, approved in February of 2000, allowed the removal of self-closing devices from the room doors of Pasquerilla West, Pasquerilla East, Knott Hall, and Siegfried Hall.
25. Variance 00-5-9, approved in May of 2000, allowed the removal of self-closing devices from room doors in Fisher Hall.
26. An examination of the FPBSC minutes for those meetings shows that not only were the Variances approved, but with only the exception of Fisher Hall, they were approved by block vote.
27. Given the numerous prior variances granted to the University for identical projects, it is difficult to now reach the conclusion that the current project is detrimental to persons or property.
28. Because of the prior recent actions by the FPBSC at this same location, and because of the concurrence of the LFO, the Variance should be approved.

NONFINAL ORDER

Variance 01-12-24 filed by Notre Dame University is hereby granted.

