

**CAUSE NOS. 05-19, 06-36 and 08-36**

**NAME: PARKER BUILDING**

**ADMINISTRATIVE LAW JUDGE: WILLIAM K. TEEGUARDEN**

**DATE: JANUARY 12, 2009**

**COMMISSION ACTION: AFFIRMED**

**FINDINGS OF FACT**

1. The Department of Homeland Security and the former Office of the State Building Commissioner whose functions are now part of the Department are agencies within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 22-13, and 675 IAC 12 apply to these proceedings.
3. The Agency is the primary state entity responsible for regulating building construction safety and in particular, it is the state entity responsible for regulating elevator safety in Indiana.
4. The Commission is the state entity responsible for approving variances in Indiana to State Building and Fire Codes in general including the State Elevator code.
5. At all times relevant to these proceedings, Parker owned a historic four story structure whose first floor houses a hardware store in downtown Richmond, Indiana.
6. Parker decided to use an open area on the fourth floor as a room for gatherings such as wedding receptions, office parties, etc.
7. The 2<sup>nd</sup> floor is essentially unused or used for storage. The third is rented to other parties but is not a public area.
8. Parker sought to make his conversion pursuant to "Rule 8" of the Indiana Building code. <sup>2</sup>
9. Rule 8 projects are projects which are designed to make useful, productive buildings out of historic buildings that were built prior to the adoption of anything resembling a modern building code.
10. The building qualifies in that it is a turn of the century (20<sup>th</sup>, not 21<sup>st</sup>) building, the conversion of which to any useful purpose other than storage on the top 3 floors would be prohibitively costly if today's codes must be met.
11. Parker has made a number of improvements to the property, most notably the installation of a current code compliant sprinkler system, alarm systems, and a 4 story exterior stairway to provide adequate additional, emergency exiting from the 4<sup>th</sup> floor.
12. Rule 8 conversions are based on a points system.
13. If the number of points is sufficient, Rule 8 deems the building safe for occupancy by the public for the use contemplated.

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<sup>2</sup> At the time of the conversion, Rule 8 was 675 IAC 12-8. This has been changed in the 2008 code to Chapter 34 of the 2008 Indiana Building Code but since this project was originally filed with the State in 2005, it is a "Rule 8" project.

14. For instance, putting in the sprinkler system and alarm system helped a lot on the points.
15. Obtaining Variances from the current construction codes also helps.
16. In cause number 05-19, the hearing took place on the 4<sup>th</sup> floor of Parker Building.
17. The focus of the hearing involved a number of problems the Agency had with allowing the public to use the fourth floor.
18. During the testimony, a witness for the petitioner identified a number of code problems and proposed to resolve the issue by seeking variances.
19. The matter was placed on hold until the variances were filed and ruled upon by the Commission.
20. Variance 06-07-2 was an eight part variance, the granting of which would resolve all issues in cause #05-19.
21. The Commission granted five parts of the variance, denying only variance parts 9a, (d), and (h).
22. All the denials involved the use of a licensed freight elevator, state number 21330, a manually operated passenger elevator.
23. The variance approvals put the Building close to Rule 8 qualification, but without the elevator issue being solved, the project was unlikely to obtain enough Rule 8 points.
24. Cause #06-36 involved a petition for review of the denial of the elevator variances.
25. Variance (a) was resolved by the creation of a protected area on the fourth floor for non ambulatory persons to await rescue by first responders in case of fire.
26. The two variances which remained for hearing were variances which would allow elevator 21330 to carry public passengers manually operated by an employee of the Parker Building and without a fire rated shaft or automatic recall.
27. The hearing on this case produced some technical information about winding drum elevators.
28. It also produced interesting testimony from an elevator expert hired by Parker.
29. Steven Stuard has worked in the elevator industry since 1967 having began at the bottom as a mechanics helper.
30. Stuard has spent the last 20 years as an elevator consultant after leaving Amco Elevators as a Vice President.
31. He has testified as an expert in civil cases on numerous occasions and investigated elevator accidents.
32. The more recent elevator codes do not allow winding drum elevators or elevators without passenger operated automatic controls to be used to transport people.
33. Prior codes, however, did, and such elevators which are still in existence may continue to operate as passenger elevators.<sup>3</sup>
34. During the course of preparing a report for Parker, Stuard discovered another elevator in the Parker Building, state number 21331, which was altered in 1956 and certified as a passenger elevator.

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<sup>3</sup> The administrative law judge can take official notice of the fact that such large department stores as Blocks, Wassons, and Ayres used manually operated elevators for years to transport large numbers of passengers.

35. The alterations required at that time had nothing to do with the winding drum lifting system, but would have involved enclosing the sides and replacing the vertical doors with a collapsible gate.
36. Stuard also testified that the reason the lifting system would not be altered at that time was because “. . . the elevator doesn’t care whether its 2,000 pounds of nails or 2,000 pounds of people.”
37. He also agreed that an operator familiar with the elevator is needed and referred to such an elevator as a “passenger riding elevator” instead of a “passenger use” elevator.
38. Stuard also opined that since elevator 21331 was already approved for passenger riding, it would make more sense in 2007 to seek to use that elevator (which is in another portion of the building separated by a 2 hour wall from the party room) than fight a battle over what kind of alteration it would take to change an old winding drum freight elevator to a passenger elevator.
39. Elevator 21330 is the closest elevator to the 4<sup>th</sup> floor party room and does not have a fire rated shaft.
40. It is not separated from the room by a two hour rated wall.
41. It does not have automatic recall.
42. The purpose of automatic recall is in the event an alarm goes off, the elevator is programmed to automatically return to the first floor and remain there unless or until the fire department releases it.
43. Another purpose of recall is to prevent passengers from being trapped in a shaft (in this case, an unprotected shaft) in case of a fire.
44. IC 22-13-2-11 sets forth the criteria for the granting of a variance.
45. Simply summarized, to grant a variance to the State Building or Elevator Code, the Commission must find the variance, possibly with added conditions, will not pose any more of a risk to public health, safety, or welfare than if the variance is not granted.
46. The testimony of Mr. Parker and Mr. Stuard indicate the cost of meeting current code for fire rating the shaft or installing an electronic automatic recall system are prohibitive and in the case of recall, may be impossible without replacing everything and putting in a totally new shaft and elevator.
47. The Agency does not dispute the cost factors here.
48. Given Mr. Stuard’s testimony that dealing with elevator 21331 which has already been certified for public use is a better way to proceed, the trier of fact cannot find that the decision of the Commission to deny variances for the non rated shaft and automatic recall of a winding drum freight elevator for easier conversion to a passenger elevator was a incorrect decision.
49. Such an action would have an adverse effect on public health, safety, and welfare and its denial was proper.

50. After Stuard's testimony, Parker decided to reintroduce the variance for elevator number 21331 which was converted to an employee operated passenger elevator in the 1950s.
51. Variance 08-05-33(a) and (b) requested variances for a non rated shaft and no automatic recall for elevator 21331 which is about 30-40 feet from elevator 21330 but separated from the party room area by a 2 hour separation.
52. The Commission granted part (a) allowing the elevator to carry passengers to the fourth floor without having a rated shaft.
53. The Commission denied part (b) which would have deleted the need for automatic recall.
54. So, after almost four years of controversy, two Variance applications, and three hearings, this whole matter has been condensed to resolving one issue; that being as follows:

“Would the grant of a variance which would delete a requirement for automatic recall on a 1950s employee operated elevator make the Building any more unsafe than it is today?”

55. In the application for Variance 08-05-33(b), the applicant made it clear that the elevator would always and only be operated by a trained employee.
56. Further, the application included a condition that the elevator will be accessible to the local emergency responders if necessary.
57. At the Commission meeting where the variance was denied (See exhibit 2), the applicant also stated that the employee-operators are trained to return the elevator immediately to the first floor and lock it.
58. With the additional condition added that a lock box with an elevator operation key inside will be placed in a location approved by the local fire department, so the department has immediate access if needed, it is hard to see why the Building, as it exists today, would be more unsafe if the variance is granted.
59. The discussion by the Commission seemed to center (See Exhibit 2, Commission minutes) upon the location of the elevator as compared with the location of the exit stairway.
60. This does not appear to relate to automatic recall versus manual recall.
61. The locations of the elevator and the exit pathway would have been relevant to a denial of a non rated shaft (essentially a four story chimney) but has a very little to do with automatic versus manual recall.
62. The Variance, with added conditions, should be granted.

#### **IV. NONFINAL ORDER**

In cause number 05-19, the order as written is hereby affirmed but is no longer effective because of superseding variances.

In cause number 06-36, the decision of the Commission to deny Variance 06-7-2(d) and (h) is hereby affirmed.

In cause number 08-36, Variance number 08-05-33(b) is hereby granted subject to the following conditions:

1. Parker shall keep documented training records dealing with the operation of elevator number 21331 including, but not limited to, the employees trained, the subject matter covered in the training, the date of the training, and the length of time spent training on that date,
2. Inspection of those training records will be part of any periodic inspection performed by the Agency,
3. Elevator 21331 shall be locked down whenever not in service and shall be operated only by an employee of Parker who has been trained in its operation,
4. Elevator 21331 shall be locked out of service whenever the fire alarm sounds. The elevator should be returned to the first floor by an operator prior to lock down if practical.
5. A lock box will be provided at a location designated by the Richmond Fire Department so that the Department has access to the elevator if it determines the elevator would be an aid to the Department in an emergency situation.