

Cause #: 97-20V

Name: Orleans Jr./Sr. High School

Administrative Law Judge: William K. Teeguarden

Date: October 2, 1998

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 ISBC apply to this proceeding.
3. IC 22-13-2-11 gives the FPBSC the power to grant variances from the ISBC.
4. At all times relevant to this proceeding, the School was involved in constructing an addition to an existing school building in Orange County, Indiana.
5. The addition in question involves standard classrooms; there are no science labs or large occupancy auditoriums or gyms involved in the addition.
6. The existing building consists of about 23,500 sq. ft.; the addition is 4,000 sq. ft.
7. The building is compartmentalized by fire walls.
8. During the course of construction, the contractor suggested saving money by changing the roof materials since the insulation being used did not require a thermal barrier.
9. The School concurred and replaced the gypson board.
10. After completion, the School and the State Fire Marshal determined the fire rating was not one hour.
11. The School stipulates that ISBC and the Indiana Fire Code require a 1 hour rated roof.
12. Calculations by the current design professional for the School show that the rating is 3/4 hour.
13. The cost of compliance would be at least \$20,000.

14. In addition, the School installed a corridor detection system which is not required which can be used as a trade off.
15. While the addition is technically a 2 story building, the surrounding terrain allows for ground exits from both stories.
16. The structure is made of steel.
17. Exhibits C, D, and E show that other building codes, including BOCA and the year 2000 proposed building code do not require one hour rated roof assemblies on 2 story school buildings.
18. An examination of the minutes of the March 3, 1998, FPBSC meeting at which this variance was discussed showed that the reasons presented for denial were that it was new construction and the tax payers did not get their moneys worth.<sup>1</sup>
19. Neither of the reasons in paragraph 18 are legal reasons to deny a variance.
20. The grant or denial of a variance is not a sanctioning or punitive action and does not specify different standards for after the fact variance requests.
21. IC 22-13-2-11 (b) requires 2 conditions be satisfied for the grant of a variance. The first involves undue hardship; the second involves whether or not the request, considering the alternatives, is adverse to the public health, safety, or welfare.
22. There clearly is an economic impact to the School, which is a hardship.
23. Given the current 3/4 hour roof assembly rating, ground exits, additional detection systems, no areas of special concerns such as chemistry labs or auditoriums, and low fire hazard construction, there is clearly no adverse impact on public health or safety.
24. Additionally, neither the local fire and building officials or the State Fire Marshal has indicated a problem with the grant of the variance.
25. The Variance should be granted.

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<sup>1</sup> The evidence at hearing showed that the parties negotiated a credit which was mutually acceptable.

**NONFINAL ORDER**

Variance request C98-3-5 is granted.

