



October 7, 2019
By Electronic Mail and U.S. Postal Mail

Carrie A. Ballinger
RTM Consultants, Inc.
6640 Parkdale Place, Suite J
Indianapolis, IN 46254-4698
ballinger@rtmconsultants.com

Re: Petition for Administrative Review – Variance No. 19-08-95(b) – Malice Manor

Dear Ms. Ballinger:

The Commission is in receipt of your petition for administrative review of Variance No. 19-08-95(b) – Malice Manor, dated 10/4/2019. The petition for review is timely and has been granted by the Commission. The petition has been assigned to the Commission's administrative law judge.

The judge's office will contact you to make arrangements for further proceedings. Should you have any questions, you may contact our deputy general counsel assigned to the matter, Justin Guedel at jguedel@dhs.in.gov or (317) 234-9515.

Sincerely,

Douglas J. Boyle, Director
Fire Prevention and Building Safety Commission
Indiana Department of Homeland Security
302 W. Washington Street, Room E-208
Indianapolis, IN 46204
doboyle@dhs.in.gov
(317) 650-7720

Enclosure

cc: Justin Guedel, IDHS Deputy General Counsel – representing the respondent (by personal service and electronic mail)
Office of Attorney General Curtis Hill – Administrative Law Judge (by electronic mail)
File

October 4, 2019

Indiana Department of Homeland Security
Fire Prevention and Building Safety Commission
c/o Chairman
302 W. Washington Street Room W246
Indianapolis, Indiana 46204



Malice Manor
Request for Administrative Review - Variance 19-08-95(b)

Dear Mr. Chairman:

On behalf of the owner, this letter is a petition for review to the Fire Prevention and Building Safety Commission regarding the condition of approval on Variance 19-08-95(b). We believe a variance is not technically required, and therefore should not have a condition of approval.

Email correspondence with IDHS Variances Section staff indicates the variance was approved with condition based upon a statement in the variance application indicating "maximum anticipated occupant load is 150" while Section 2902.3 Exception #2 permits spaces with an occupant load "less than 150" to not provide public restroom facilities (see page 3 of email attachment). However, there are 3 restrooms existing in the building. Even with an occupant load of exactly 150 (though less are anticipated), the existing restrooms would satisfy the requirement for public fixtures and so it complies with Section 2902.1 as existing. There is nothing in the code that would prohibit the public from using the existing restroom facilities located in the employee area. Therefore, no variance is required.

Thank you for your attention to this matter. If you have any questions, please let us know.

Very truly yours,

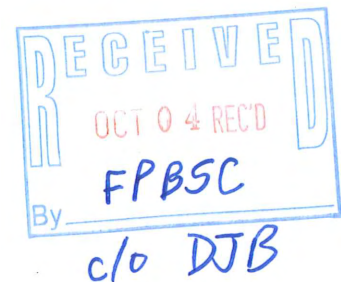
RTM Consultants, Inc.

A handwritten signature in black ink that reads "C. A. Ballinger".

Carrie A. Ballinger
Associate

attachment: Email correspondence with IDHS Variances Section

cc: Amanda Durkin, Master of Fright, LLC
Kevin Burns, Architectural Investments
Rick Barr, Building Commissioner, Town of Clarksville



Carrie Ballinger

From: IDHS Variances <Variances@dhs.IN.gov>
Sent: Thursday, September 19, 2019 11:54 AM
To: Carrie Ballinger
Cc: MOFPLLC@GMAIL.COM; Fitzpatrick, Denise; Hyten, Kim R; Burgess, Craig; Vanblaricum, Karla
Subject: RE: Notice of Proposed Conditions for Variance No. 19-08-95 (ID #19623) (b) - 2014 Indiana Building Code, Sec. 3401.3, 2902.1 - Malice Manor

The Department will amend its proposed condition to grant variance (b) until the end of the year (December 31, 2019). This is the Department's final determination, and the action letter will be forthcoming shortly. If you still disagree with this determination, appeal rights are provided with the action letter to pursue administrative review.

Our staff reiterates, *with emphasis*, that there are other methods of recourse that are more appropriate to pursue than seeking a variance, if an aggrieved individual truly believes he/she is not in violation of a code requirement.

IDHS Variances Section

Indiana Department of Homeland Security
Indiana Government Center South – Second Floor
302 W. Washington Street
Indianapolis, IN 46204
Tel: (317) 232-1402
Email: variances@dhs.in.gov
Web: <http://www.in.gov/dhs/4290.htm>



From: Carrie Ballinger [mailto:ballinger@rtmconsultants.com]
Sent: Thursday, September 19, 2019 11:35 AM
To: IDHS Variances <Variances@dhs.IN.gov>
Cc: MOFPLLC@GMAIL.COM; Fitzpatrick, Denise <dfitzpatrick@dhs.IN.gov>; Hyten, Kim R <KHyten@dhs.IN.gov>; Burgess, Craig <CBurgess@dhs.IN.gov>; Vanblaricum, Karla <KVanblaricum@dhs.IN.gov>
Subject: RE: Notice of Proposed Conditions for Variance No. 19-08-95 (ID #19623) (b) - 2014 Indiana Building Code, Sec. 3401.3, 2902.1 - Malice Manor

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Just an added thought – is it possible you could determine “No Variance Required” with a condition added that the anticipated occupant load is less than 150?

Carrie Ballinger
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Indianapolis, IN 46254

Tel. (317) 329-7700 x110
Fax. (317) 329-8411

From: Carrie Ballinger
Sent: Thursday, September 19, 2019 11:16 AM
To: IDHS Variances <Variances@dhs.IN.gov>
Cc: MOFPLLC@GMAIL.COM; Fitzpatrick, Denise <dfitzpatrick@dhs.IN.gov>; Hyten, Kim R <KHyten@dhs.IN.gov>; Burgess, Craig <CBurgess@dhs.IN.gov>; Vanblaricum, Karla <KVanblaricum@dhs.IN.gov>
Subject: RE: Notice of Proposed Conditions for Variance No. 19-08-95 (ID #19623) (b) - 2014 Indiana Building Code, Sec. 3401.3, 2902.1 - Malice Manor
Importance: High

If after reviewing my last email, you are certain that a variance is required, then we would request that the approval be extended through the end of the year instead of November, as they have special events through December.

Carrie Ballinger
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Indianapolis, IN 46254

Tel. (317) 329-7700 x110
Fax. (317) 329-8411

From: Carrie Ballinger
Sent: Thursday, September 19, 2019 11:13 AM
To: IDHS Variances <Variances@dhs.IN.gov>
Cc: MOFPLLC@GMAIL.COM; Fitzpatrick, Denise <dfitzpatrick@dhs.IN.gov>; Hyten, Kim R <KHyten@dhs.IN.gov>; Burgess, Craig <CBurgess@dhs.IN.gov>; Vanblaricum, Karla <KVanblaricum@dhs.IN.gov>
Subject: RE: Notice of Proposed Conditions for Variance No. 19-08-95 (ID #19623) (b) - 2014 Indiana Building Code, Sec. 3401.3, 2902.1 - Malice Manor
Importance: High

The clarification letter attachment to the variance indicates the actual anticipated occupant load is under 150. The application should have indicated "less than 150" that was an error on my part in using the threshold number instead of clearly indicating the anticipated load as less than 150 – which is why I added the clarification letter attachment. The LBO's letter shows the chart that was originally shown on the plans showing the actual anticipated occupant load before the architect revised the chart to show calculated occupant loads upon the reviewer's request (See below excerpt from his letter).

Even if the anticipated were exactly 150 – there is nothing preventing the public occupants from using the existing restrooms in the building. There is nothing in the code that would suggest they cannot use restrooms that are located inside the employee work area. (Even if the total anticipated occupant load was 150 – the 3 existing restrooms would suffice to comply with code...) The local official misinterprets that public going into that area to access restrooms would change the occupancy of that area from B to A, which is incorrect. Occupancy classification of the employee work area doesn't change just because public people are entering to use the restrooms – it doesn't suddenly make that area an assembly area just because the people entering the area aren't employees.

Regardless of how you look at it – 150 max or less than 150, no variance would be required because there are 3 existing restrooms in that building.

Clarksville's Initial Plan Review – 1st Review

Occupant load calculation for means of egress purposes was not based upon Function of Space per Table 1004.1.2. Requested Design Professional provide means of egress calculation based upon Function of Space in Table 1004.1.2. Design Professional's initial occupant load calculation were as follows:

OCCUPANT COUNT:	
STAFF WORK AREAS	30 OCCUPANTS
WAITING SPACE	50 OCCUPANTS
ONE-WAY MAZE	30 OCCUPANTS
STAFF WORK AREA	<u>3 OCCUPANTS</u>
	113 TOTAL OCCUPANTS

Carrie Ballinger

RTM Consultants, Inc.
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Indianapolis, IN 46254

Tel. (317) 329-7700 x110

Fax. (317) 329-8411

From: IDHS Variances <Variances@dhs.IN.gov>

Sent: Thursday, September 19, 2019 10:50 AM

To: Carrie Ballinger <ballinger@rtmconsultants.com>

Cc: MOFPLLC@GMAIL.COM; Fitzpatrick, Denise <dfitzpatrick@dhs.IN.gov>; Hyten, Kim R <KHytten@dhs.IN.gov>;

Burgess, Craig <CBurgess@dhs.IN.gov>; Vanblaricum, Karla <KVanblaricum@dhs.IN.gov>

Subject: RE: Notice of Proposed Conditions for Variance No. 19-08-95 (ID #19623) (b) - 2014 Indiana Building Code, Sec. 3401.3, 2902.1 - Malice Manor

Ms. Ballinger,

After reviewing your concerns on the proposed condition, the Department has determined that the condition is still appropriate, due to the fact that your application for a variance states, for the record, that "the maximum anticipated occupant is 150, which would require 1 male/2 female water closets per Table 2902.1." A maximum anticipated occupant load of 150 does not meet the requirements of Exception #2 of Section 2902.3, and therefore compliance with both Section 2902.3 and Section 2902.1 is required.

The Department will move forward today with issuing the action letter for this application for a variance(s) based on its original determinations, unless you wish to withdraw your application at this time to pursue alternative methods of recourse in challenging the local building official's interpretation of the code or any violation orders issued in regard to this code requirement(s).

IDHS Variances Section

Indiana Department of Homeland Security
Indiana Government Center South – Second Floor

302 W. Washington Street

Indianapolis, IN 46204

Tel: (317) 232-1402

Email: variances@dhs.in.gov

Web: <http://www.in.gov/dhs/4290.htm>



From: Carrie Ballinger [<mailto:ballinger@rtmconsultants.com>]
Sent: Wednesday, September 18, 2019 1:37 PM
To: IDHS Variances <Variances@dhs.IN.gov>; Boyle, Douglas J (DHS) <DoBoyle@dhs.IN.gov>; Fitzpatrick, Denise <dfitzpatrick@dhs.IN.gov>
Cc: MOFPLLC@GMAIL.COM
Subject: RE: Notice of Proposed Conditions for Variance No. 19-08-95 (ID #19623) (b) - 2014 Indiana Building Code, Sec. 3401.3, 2902.1 - Malice Manor

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We have not received a response to my request below last Friday. Can we have a meeting or phone call to discuss this variance? As I noted below, we are not in agreement with the proposed condition of approval as we do not believe a variance is required per the outlined code compliance below.

Carrie Ballinger
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6640 Parkdale Place, Suite J
Indianapolis, IN 46254

Tel. (317) 329-7700 x110
Fax. (317) 329-8411

From: Carrie Ballinger
Sent: Friday, September 13, 2019 1:06 PM
To: IDHS Variances <Variances@dhs.IN.gov>
Cc: MOFPLLC@GMAIL.COM
Subject: RE: Notice of Proposed Conditions for Variance No. 19-08-95 (ID #19623) (b) - 2014 Indiana Building Code, Sec. 3401.3, 2902.1 - Malice Manor
Importance: High

Can we request a meeting or phone call with the department to discuss this variance?

This condition should not be applied because there is technically no requirement for a variance. The code does not require public restroom facilities in a building with occupant load less than 150 and which does not serve food or drinks in accordance with IBC Section 2902.3 Exception 2 (Indiana Amendment – see below). The occupant load for plumbing fixtures is permitted to be based upon actual anticipated occupant load in accordance with IBC Section 2902.1.1 Exception 2 (Indiana Amendment – see below). There are 3 existing restrooms serving the employees, which complies with Table 2902.1 for B Occupancy – 2 restrooms are required to serve the anticipated less than 40 employees.

(g) Amend Section 2902.3, Employee and public toilet facilities as follows:

- (1) In the first sentence, delete "intended for public utilization" and insert "utilized as restaurants, night clubs, places of assembly, and retail sales occupancies".
- (2) Change "Exception" to read "Exceptions".
- (3) Number the "Exception" to read "1".
- (4) Add Exception 2. To read as follows: 2. Public facilities are not required in structures or tenant spaces with an occupant load of less than one hundred fifty (150) and which do not serve food or beverages to be consumed within the structure or tenant space.

(c) Amend Section 2902.1.1, Fixture calculations, by renumbering the current exception as Exception 1, and Exception 2 to read as follows: 2. The actual number of occupants for whom each occupied space, floor or building is although less than those determined by calculation, shall be permitted to be used in the determination of the design occupancy for fixture calculations. The actual number of occupants for which a parking garage is designed for purposes of this section shall be zero (0).

[P] TABLE 2902.1
MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES^a (See Section 2902.1.1)

No.	CLASSIFICATION	OCCUPANCY	DESCRIPTION	WATER CLOSETS (URINALS SEE SECTION 419.2 OF THE INTERNATIONAL PLUMBING CODE)		LAVATORIES	
				MALE	FEMALE	MALE	FEMALE
2	Business	B	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for the first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for the first 80 and 1 per 80 for the remainder exceeding 80	

Carrie Ballinger
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Indianapolis, IN 46254

Tel. (317) 329-7700 x110
Fax. (317) 329-8411

From: IDHS Variances <Variances@dhs.IN.gov>
Sent: Friday, September 13, 2019 12:42 PM
To: Carrie Ballinger <ballinger@rtmconsultants.com>; MOFPLLC@GMAIL.COM
Cc: kburns@architecturalinvestments.com; Rick Barr <RBarr@townofclarksville.com>; Brent Wilson <bwilson@cfdfire.com>
Subject: Notice of Proposed Conditions for Variance No. 19-08-95 (ID #19623) (b) - 2014 Indiana Building Code, Sec. 3401.3, 2902.1 - Malice Manor

Ms. Ballinger and Ms. Durkin,

The Department has reviewed your application for a variance and intends to approve **variance (b) - 2014 Indiana Building Code, Sec. 3401.3, 2902.1** with additional condition(s). Please see the attached notice for additional information regarding this proposed action and options available to you if you disagree with the proposed condition(s). Please advise at your earliest convenience if you are amenable and consent to the proposed condition(s).

IDHS Variances Section

Indiana Department of Homeland Security
Indiana Government Center South – Second Floor
302 W. Washington Street
Indianapolis, IN 46204
Tel: (317) 232-1402
Email: variances@dhs.in.gov
Web: <http://www.in.gov/dhs/4290.htm>





ERIC J. HOLCOMB, Governor
STATE OF INDIANA

DEPARTMENT OF HOMELAND SECURITY

BRYAN J. LANGLEY, EXECUTIVE DIRECTOR

Indiana Department of Homeland Security
Indiana Government Center South
302 West Washington Street
Indianapolis, IN 46204
317-232-3980

Amanda Durkin
Master of Fright, LLC
640 PROVIDENCE WAY

September 19, 2019

CLARKSVILLE, IN 47129

Dear Amanda Durkin,

This letter provides notice of the action taken on your application(s) for a variance(s) from the Commission's rules under IC 22-13-2-11.

Project Number	Project Name	Variance Number
407822	Malice Manor	19-08-95

Conditions

(b) 2014 IBC Sec. 3401.3, 2902.1 - The Indiana Department of Homeland Security approves this variance with the following additional condition:
This variance is effective until December 31, 2019 (12/31/2019).

Edition	Code	Code Section	Action & Date
	Other Code (Not in the list provided)	2014 IBC Sec. 3412.6.9	Approved as submitted 09/19/2019
	Other Code (Not in the list provided)	2014 IBC Sec. 3401.3, 2902.1	Approved with Commission condition(s) 09/19/2019

If you have any questions regarding this order, you may contact that Department at (317) 232-2222.

ADMINISTRATIVE REVIEW

If you desire administrative review of this order, you must comply with the requirements of Indiana Code IC 4-21.5-3-7 and file a written petition for review within fifteen (15) days after receiving notice of this order. Your petition for review must state facts demonstrating that you are: (1) a person to whom the order is specifically directed; (2) aggrieved or adversely affected by the order; or (3) entitled to review under any law. You may submit your petition by one of the following methods:

U.S.MAIL OR PERSONAL SERVICE

ONLINE

Owner / Applicant Information

Amanda Durkin
Master of Fright, LLC
640 PROVIDENCE WAY

CLARKSVILLE IN 47129

Phone 8128206353

Email MOFPLLC@GMAIL.COM

Submitter Information

Carrie Ballinger
RTM Consultants, Inc.
6640 Parkdale Place, Ste J

Indianapolis IN

Phone 3173297700

Email ballinger@rtmconsultants.com

Designer Information

KEVIN M BURNS
Architectural Investments
222 S. First Street

Louisville KY

Phone 5025629220

Email kburns@architecturalinvestments.com

Project Information

Malice Manor
640 Providence Way

CLARKSVILLE IN 47129

County CLARK

Project Type New Addition Alteration Existing Change of Occupancy

Project Status F F=Filed U or Null=Unfiled

IDHS Issued Correction order? No **Has Violation been Issued?** No

Violation Issued by: NA

Local Building Official

Phone:

Email:

Local Fire Official

Phone:

Email:

Variance Details

Code Name: Other Code (Not in the list provided)
2014 IBC Sec. 3412.6.9

Conditions: The request is to permit 5 points taken in Section 3412.6.9 for voice/alarm communication system with no fire command center. The score allowed for voice/alarm system without a fire command center is 0 (same as score without a voice/alarm system). The score allowed for voice/alarm system AND fire command center is 5.

The project involves remodel and conversion of an existing building from an auction hall/storage warehouse to a haunted house/rage rooms (Special Amusement). The existing building is 1-story with approximately 10,885sf with 833sf mezzanines, and is separated into 3 fire areas. The building is classified Type VB Construction and is evaluated as non-separated A-3/B Occupancy.

DEMONSTRATION THAT PUBLIC HEALTH, SAFETY, AND WELFARE ARE PROTECTED:

- 1=Non-compliance with the rule will not be adverse to the public health, safety or w
- 2= Applicant will undertake alternative actions in lieu of compliance with the rule to ensure that granting of the variance will not be adverse to public health, safety, or welfare. Explain why alternative actions would be adequate (be specific).

Facts:

1. A fire command center would provide minimal benefit to fire safety in the small 1-story building. Fire command centers are typically required for high-rise buildings.
2. An NFPA 72 compliant fire alarm system will be installed throughout the building in accordance with Section 907.
3. An NFPA 72 compliant emergency voice/alarm communication system will be installed throughout the building in accordance with Section 907.5.2.2.
4. Smoke detection will also be provided throughout the building tied to the fire alarm system.
5. The maximum travel distance to an exit will be 100 feet. Code permits 200 feet.
6. Emergency lighting and exit signs will be provided where required in accordance with current code.
7. Similar variances have been approved, including 16-04-20(b), 17-07-59(b), 18-11-36(a), 18-11-40(a) and 19-08-29.

DEMONSTRATION OF UNDUE HARDSHIP OR HISTORICALLY SIGNIFICANT STRUCTURE:

- Imposition of the rule would result in an undue hardship (unusual difficulty) because of physical limitations of the construction site or its utility services.
- Imposition of the rule would result in an undue hardship (unusual difficulty) because of major operational problems in the use of the building or structure.
- Y Imposition of the rule would result in an undue hardship (unusual difficulty) because of excessive costs of additional or altered construction elements.
- Imposition of the rule would prevent the preservation of an architecturally or a historically significant part of the building or structure.

Facts: The hardship is providing a 200sf, 1-hour rated fire command center that would be needed to take points for category D, while it would provide little benefit in this 2-story building. Fire command centers are typically required for high-rise buildings.

Variance Details

Code Name: Other Code (Not in the list provided)
2014 IBC Sec. 3401.3, 2902.1

Conditions: Section 3412 is being used to evaluate the building for the proposed use. Code requires a change of occupancy to include Group A to comply with Chapter 29 for fixture count. The request is to use portable restrooms to comply with the fixture count requirements.

There are 3 existing restrooms in the building; however, the local building official does not consider the existing restrooms as satisfying fixture count requirements for the assembly occupancy because they are in an area of the building that is typically for staff only and not regularly occupied by public.

The project involves remodel and conversion of an existing building from an auction hall/storage warehouse to a haunted house/rage rooms (Special Amusement). The existing building is 1-story with approximately 10,885sf with 833sf mezzanines, and is separated into 3 fire areas. The building is classified Type VB Construction and is evaluated as non-separated A-3/B Occupancy.

DEMONSTRATION THAT PUBLIC HEALTH, SAFETY, AND WELFARE ARE PROTECTED:

1

1=Non-compliance with the rule will not be adverse to the public health, safety or w

2= Applicant will undertake alternative actions in lieu of compliance with the rule to ensure that granting of the variance will not be adverse to public health, safety, or welfare. Explain why alternative actions would be adequate (be specific).

Facts:

1. There are 3 existing individual user restrooms in the building that will be used primarily by staff, but would be made available to public as the need arises.
2. At least 3 portable restrooms will be provided near the front parking lot for convenience during peak seasons (typically 5 weeks between the last week of September through first week of November during Halloween season each year), and will include provisions for accessibility.
3. The maximum anticipated occupant load is 150, which would require 1 male/2 female water closets per Table 2902.1.
4. Drinking water will be available for occupants.
5. Similar variances have been approved in the past to allow portable restrooms for assembly spaces.

DEMONSTRATION OF UNDUE HARDSHIP OR HISTORICALLY SIGNIFICANT STRUCTURE:

Imposition of the rule would result in an undue hardship (unusual difficulty) because of physical limitations of the construction site or its utility services.

Imposition of the rule would result in an undue hardship (unusual difficulty) because of major operational problems in the use of the building or structure.

Imposition of the rule would result in an undue hardship (unusual difficulty) because of excessive costs of additional or altered construction elements.

Imposition of the rule would prevent the preservation of an architecturally or a historically significant part of the building or structure.

Facts:

The hardship is the cost to add and maintain additional permanent restroom facilities for public use while there are already 3 existing restrooms in the building and the primary occupancy for haunted house is seasonal.



RTM CONSULTANTS, INC.
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RECEIVED
IDHS
OCT 04 2019
COMMISSION
STAFF

Indiana Department of Homeland Security
Fire Prevention and Building Safety Commission
c/o Chairman
302 W. Washington Street, Rm W246
Indianapolis, Indiana 46204

BUILDING CODES ♦ FIRE PROTECTION ♦ ADA ♦ JCAHO/CMS/HFAP