



November 26, 2019
By Electronic Mail and U.S. Postal Mail

David Cook
Ralph Gerdes Consultants, LLC
5510 South East Street
Suite E
Indianapolis, IN 46227
dave@rgc-codes.com

**Re: Petition for Administrative Review – Variance No. 19-10-61 (a) – MSD of Pike Township
Early Learning Center**

Dear Mr. Cook:

The Fire Prevention and Building Safety Commission (Commission) is in receipt of your petition for administrative review of Variance No. 19-10-61 (a) – MSD of Pike Township Early Learning Center, dated 11/18/2019. Your petition for administrative review will be reviewed and discussed at the next regularly scheduled meeting of the Commission – currently scheduled to begin at 9:00 a.m. on Tuesday, December 3, 2019. Pursuant to Indiana Code § 4-21.5-3-7, the Commission will make a determination as to whether you, as the petitioner, have standing and qualify for review of this order.

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
dboyle@dhs.in.gov
(317) 650-7720

Enclosure

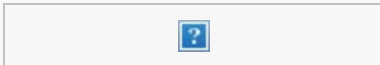
cc: Justin Guedel, IDHS Deputy General Counsel – representing the respondent (by personal service and electronic mail)
File

From: [DHS Legal Mailbox](#)
To: [Boyle, Douglas J \(DHS\)](#)
Subject: FW: Petition for Review
Date: Tuesday, November 19, 2019 1:26:49 PM
Attachments: [68379161 Commission Action Letter 19-10-61.pdf](#)
[68380022 Petition for Review 19-10-61 a.pdf](#)

Justin K. Guedel | Deputy General Counsel
Indiana Department of Homeland Security
302 W. Washington Street, Rm. E208
Indianapolis, IN 46204
(317) 234-9515
JGuedel@dhs.IN.gov

From: noreply@formstack.com [mailto:noreply@formstack.com]
Sent: Monday, November 18, 2019 2:26 PM
To: DHS Legal Mailbox <Legal@dhs.IN.gov>
Subject: Petition for Review

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Formstack Submission For: [petition for review](#)
Submitted at 11/18/19 2:26 PM

Individual Name:	David Cook, RA, NCARB
Business Name: :	Ralph Gerdes Consultants, LLC
Phone Number:	(317) 787-3750
Email Address:	dave@rgc-codes.com
Mailing Address:	5510 South East Street, Suite E Indianapolis, IN 46227
Are you represented by an attorney?:	No
Attorney Name:	

Firm:	
Phone Number:	
Email Address:	
Mailing Address:	
Order Number:	
Facility Device Boiler ID:	n/a
Date Order Received:	Nov 04, 2019
How did you receive the Order? :	Email
Entity Issuing Order:	Fire Prevention and Building Safety Commission
Entity Name:	
Upload Order:	View File
Was this order specifically directed to you?:	Yes
Explain:	Indirectly yes, by the fact that I am the Official Submitter of the variance on behalf of the Architect and Owner.
Have you been aggrieved or adversely affected by the order?:	Yes
Explain:	Indirectly yes, by the fact that I am the Official Submitter of the variance on behalf of the Architect and Owner I'm also submitting the appeal on their behalf.
If the order was not specifically directed to you and you have not been aggrieved or adversely affected by the order, are you entitled to review under some other law? :	No

What law?:	
I request review of the entire order described above:	Yes
If you are not requesting review of the entire order, what is the scope of your request?:	See attached Petition for Review Review of the "not approved" decision of the first variance ANSI A117.1-2009 604.5.2
I request a stay of effectiveness:	Yes
What is the basis of your challenge? :	See attached Petition for Review
What is your desired outcome? :	That variance (a) be ruled 'approved' or 'compliant / no variance required'.
Additional information in support of my request:	See attached Petition for Review . Additional information and documentation can and will be submitted prior to the hearing.
Additional Attachments:	View File
Additional Attachments:	
Additional Attachments:	

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

November 18, 2019

Mr. Douglas J. Boyle, Director
Fire Prevention and Building Safety Commission
Indiana Department of Homeland Security
302 W. Washington Street, Room E208
Indianapolis, IN 46204

PETITION FOR REVIEW - VARIANCE 19-10-61 (a) (ANSI A117.1-2009, 604.5.2)
MSD OF PIKE TOWNSHIP EARLY LEARNING CENTER
7839 NEW AGUSTA ROAD
INDIANAPOLIS, IN 46268

Dear Mr. Boyle:

On behalf of the Architect and Owner, we petition for review the Commission's November 4, 2019 action to 'not approved' of Variance 19-10-61 (a) reference ANSI section A117.1-2009 604.5.2.

This request is based on that there was no explanation give, even after a request for some reason/basis for such ruling on November 5th. The Architect and Owner believe that due to the code compliant conflict that happens between the vertical flush valve and the horizontal grab bar requirements, that the Code has exceptions that are being met, or at least provide for an equal alternative, to the conflict.

The Architect and Owner would be aggrieved and adversely affected if the decisions of the Fire Prevention and Building Safety Commission were to stand without the Architect and Owner being afforded an opportunity to explain their position.

Accordingly, per Indiana Code IC 4-21.5-3-7 the Architect and Owner are entitled to a review of the Commission's action and, therefore, delivers this petition for review, requesting an appointment of an Administrative Law Judge and hearing.

Please contact the undersigned and the Architect at their office regarding setting a date and time for the hearing.

Very Truly Yours,



David Cook, RA, NCARB
Senior Code Consultant

#4497



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

Raul Rivas
MSD of Pike Township
6901 ZIONSVILLE ROAD

November 4, 2019

INDIANAPOLIS, IN 46268

Dear Raul Rivas,

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
396812	MSD of Pike Township Early Learning Center	19-10-61

Conditions

Edition	Code	Code Section	Action & Date
	Other Code (Not in the list provided)	ANSI A117.1-2009 604.5.2	Not Approved 10/29/2019
	Other Code (Not in the list provided)	ANSI A117.1- 2009,305.5/305.7.2	No Variance Required 10/29/2019

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

Indiana Department of Homeland Security
Fire Prevention and Building Safety Commission
302 W.Washington Street, Rm. E208
Indianapolis, IN 46204

ONLINE

By completing the form at
<https://www.in.gov/dhs/appeals.htm>

For additional information about the administrative review process and applicable templates that may be used for filings, visit the following link
<https://www.in.gov/dhs/appeals.htm>

Owner / Applicant Information

Raul Rivas
MSD of Pike Township
6901 ZIONSVILLE ROAD

INDIANAPOLIS IN 46268

Phone 3172930393

Email RRIVAS@PIKE.K12.IN.US

Submitter Information

David Cook, Architect, NCARB
Ralph Gerdes Consultants, LLC
5510 South East Street

Indianapolis IN

Phone 3177873750

Email dave@rgc-codes.com

Designer Information

William E. Payne
Fanning Howey
9025 River Road

Indianapolis IN

Phone 3178480966

Email wpayne@fhai.com

Project Information

MSD of Pike Township Early Learning Center
7839 New Augusta Road

INDIANAPOLIS IN 46268

County MARION

Project Type New Addition Alteration Existing Change of Occupancy

Project Status F=Filed U or Null=Unfiled

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

Violation Issued by: LBD

Local Building Official

Phone: Email:

Local Fire Official

Phone: Email:

Variance Details

Code Name: Other Code (Not in the list provided)

ANSI A117.1-2009 604.5.2

Conditions: A new pre-school has several toilet rear grab bars that have been cited for not being long enough, thus not providing a bar length of 12" minimum on the side closest to the wall, and 24" on the transfer side, because of conflict with extended vertical flush valves. Code exception does permit a 24" minimum grab bar length, center on the w/c, where wall space does not permit a grab bar 36" minimum in length due to the location of a recessed fixture adjacent to the w/c. Additional, exception #2 does permit when flush valves are in conflict with the location of the rear grab bar, that the grab bar shall be permitted to be split or shifted to the open side of the toilet area.

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

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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. Access and use of the toilets and grab bars are not restricted from proper use with these solutions.
2. Each room has a 24" grab bar due to conflict with the flush valve due to the lower height of children's grab bars. We are utilizing exception #2 for this reason and using exception #1 to use a 24" bar instead of a 36" in spaces where it will not fit to the side of the flush valve. We need a variance for the rooms where a 36" bar could fit, but we did not install it, instead placed the 24" grab bar. (See ANSI A117.1 604.5.2 diagram)
3. Rear wall grab bars we believe is referencing the following rooms (inspector has not called out specific rooms):
(See Plan 4A)
A125 24" bar only has 12.75" before toilet partition, cannot fit 36" bar with escutcheon
A110 24" bar has additional 18" to toilet partition, Need variance as 36" bar would fit, but installed a 24" grab bar
B122 24" bar only has 12 5/8" to toilet partition, Cannot fit 36" bar with escutcheon
B107 24" bar only has 13.25" to toilet partition. Cannot fit a 36" bar with escutcheon
B116 24" bar has 14.25" to toilet partition. Need variance as a 36" bar would fit, but installed a 24" grab bar
See Plan 4 B
A115 24" bar has 13.75" to toilet partition, Need variance as 36" bar would fit, but installed a 24" grab bar
B106 24" has 13.25" to toilet partition. Cannot fit a 36" bar with escutcheon
See Plan 4 C
A151 24" bar only has 2 3/8" to recessed sink alcove.
See Plan 4 D
A139 24" bar only has 2.25" to recessed sink alcove.
4. The owner and architect are aware they are not in compliance with ADA.

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.

Y

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 owner's undue hardship is the fact that the grab bars are already installed, as well as the toilets and flush valves. Replacement of the grab bars and/or the extended flush valves would be cost prohibitive and to the school schedule.

Variance Details

Code Name: Other Code (Not in the list provided)

ANSI A117.1-2009,305.5/305.7.2

Conditions: A new pre-school has approximately five (5) sink locations that are being cited for width violations for forward approach alcoves. The depths of all the alcoves are less than 24" inches (approximately 20"), and all the widths are approximately 29" wide, except for one (B129) which is 31", instead of the 30" caused by the thickness of the tile installation. Code requires forward approach alcoves to be 30", and 36" when deeper than 24". Violation states (see attachment) all alcoves are to be 36" width, even though none are deeper than 20".

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 welfare.
 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. Access to the sinks will not be restricted even at 29" clear width.
2. We believe this is a code compliant situation since all the alcoves are less than 24".
3. See Plan 3A, Plan 3B and Plan 3C and copy of ANSI attached.
A137 = 29" instead of 30" at 20" deep
A138 = 29" instead of 30" at 20" deep
A139 = 29" instead of 30" at 20" deep
A151 = 29" instead of 30" at 20" deep
B129 = 31" instead of 30" at 20" deep. Not a violation per ANSI 305.5 but inspector is still listing.
4. Owner and architect are aware that this is not in compliance with ADA.

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 owner's undue hardship is the alcoves are already built and to remove the wall surfaces and replace with thinner material to gain 1" is disruptive and cost prohibitive to the school schedule.