

Cause No. #01-27
Name: Lyons Insurance and Real Estate
Administrative Law Judge: Teegarden
Date: September 5, 2001
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, and the Indiana Building Code (“IBC”) apply to this proceeding.
3. The FPBSC is both the initial authority and ultimate authority with respect to the grant or denial of variances within the meaning of IC 4-21.5.
4. At all times relevant to this proceeding, the Business was an active real estate and insurance agency located in downtown Richmond, Indiana.
5. In the course of constructing a new building, the building was relocated slightly to allow for an ADA compliant ramp.
6. Unfortunately, the relocation to accommodate the ramp placed the building six feet from the south property line.
7. This fact alone does not constitute a violation of the IBC; the building can be located there as long as the openings are fire rated.
8. Delete finding.
9. Section 503.2.1 and Table 5A of the IBC prohibit construction of this type of building within 5 feet of the property line and requires fire rated openings if the exterior wall is 5-10 feet from the line.
10. The adjoining property to the south is owned by an accounting firm and is used as the firm’s parking lot.
11. The purpose of the setback requirement in the IBC is to allow sufficient space for access by the fire service and emergency egress by occupants of the building.
12. If the access-egress space does not meet the minimum requirement of the code, the IBC requires fire-rated construction in order to reduce the danger of the fire spreading from property to property and allow occupants of the building some extra time to escape.

13. The application for the Variance would allow the building to remain as is and relies on the fact that the business next door is an ongoing, stable business, which has no desire to build on the parking lot.
14. The accounting firm has provided a letter saying the parking lot is essential for conducting business and “. . . At the present time we cannot foresee any situation that would cause us to build on that property.”
15. As long as there is no construction on the parking lot near the property line, the intent of the IBC is met and there is no problem.
16. When it denied the Variance in May, 2001, the FPBSC was correctly concerned there were no guarantees that construction would never take place on the parking lot near the property line.
17. The grant or denial of variances is governed by IC 22-13-2-11.
18. The key provision is found in IC 22-13-2-11(a)(2) which states
“(2) either:
(A) noncompliance with the rule, or
(B) compliance with an alternative requirement . . .
will not be adverse to the public health, safety, or welfare.”
19. Since a general variance runs with the building as long as the building has the same occupancy classification, the FPBSC was certainly justified in denying the Variance as there is no guarantee that down the road the building as built will not be adverse to safety.
20. There is a middle ground, however, that provides the Business some relief.
21. It is clear from the documents presented that no permanent obstructions will be placed near the property line in the near future.
22. If a temporary variance is granted, there is no degradation of public health, safety, or welfare and would give the Business a period of time to either obtain a recorded easement or license from the accounting firm or plan an organized, financially sound method of complying with fire-rating requirements.
23. The Business should receive a temporary variance for a period of two years from the date of the grant.

NONFINAL ORDER

Variance 01-05-20 is hereby granted subject to the condition that it is a temporary variance and expires two years from the date of approval.