

Cause #: 02-26V

Name: Holiday Inn Express-Corydon

Administrative Law Judge: Substitute Judge – Sylvia Wilcox

Date: January 17, 2003

Commission Action: Affirmed

## FINDINGS OF FACT

1. The Indiana Fire Prevention and Building Safety Commission hereinafter, the “Commission”, is an agency within the meaning of Ind. Code 4-21.5.
2. Ind. Code 4-21.5, Ind. Code 22-12, Ind. Code 22-13, and 675 IAC 12-5 apply to this proceeding.
3. The Commission is the agency responsible for adopting a statewide code of fire safety laws in order to safeguard “life or property from the hazards of fire or explosion.” *See* Ind. Code 22-12-1-13. Pursuant to Ind. Code 22-13-2-11, the Commission may grant variances to its rules, including fire safety rules.
4. If an appeal is filed on the Commission’s variance denial, and if the variance involves fire safety issues, counsel to the OSFM participates only “when the OSFM recommended denial of the variance.” *See* November 8, 2002, Advisory to Administrative Law Judge Concerning the Commission’s Variances and the Office of the State Fire Marshall.
5. Official notice is taken of the HIE #02-05-39(c) application for variance. In April 2002, HIE requested a variance for its hotel laundry chute and specifically requested a variance in lieu of taping unreachable joints in some locations inside the shaft of the laundry chute.
6. In demonstrating a hardship regarding repair of the chute to meet rule requirements, HIE provides:

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

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

...The owner’s undue hardship is the need to have the laundry chute for housekeeping the difficulty of reaching the inaccessible areas of the shaft that were not taped without demoli[s]ion of the existing construction. The cost of reconstruction of the shaft is not justified when the additional sprinklers located at the top and the bottom of the shaft will provide adequate protection from a fire.
7. On May 28, 2002, HIE appealed the Variance #02-05-39(a) and 02-05-39(c) denials. Official notice is taken of HIE’s request for administrative review as faxed on May 28, 2002.

8. A hearing was held on November 20, 2002, in Indianapolis, Indiana, regarding the sole issue of 02-05-39(c), the variance denial for sprinklers in a laundry chute.
9. Dennis Bradshaw of Ralph Gerdes Consultants, LLC, represented HIE.
10. Mara Snyder, legal counsel for the Office of the State Fire Marshall appeared. Snyder did not represent the Commission.
11. At hearing, several variance approvals were presented by HIE, variance approvals similar in nature to 02-05-39(c).
12. Claimant's Exhibit 1 shows a variance application for a sprinkler protection system on a three-story stair "that will open with no fire-resistive construction." Transcript at 8. The description of non-compliance provides:

One of two (2) existing 3-story stair will open. The stair is required to be enclosed with fire-resistive construction since connecting 3 floors.

The project involves the conversion of an existing hospital to apartments. The building is classified as R-1 Occupancy and Type III 1-hour Construction.

13. Exhibit 1 also provides that adherence to the rule would cause undue hardship, "because of excessive costs of additional or altered construction elements" and because the requirements would "prevent the preservation of a historically significant part of the building"
14. On May 8, 2002, the Commission approved the variance described in Exhibit 1 and the minutes of that meeting reflect:

The request was to have a stairway connecting three floors to not be enclosed. Commissioner Riffey moved to approve with the condition that they will[] install a residential quick response sprinkler system and the exit stairway is to be separated from the first floor.[.]

15. Claimant's Exhibit 3 shows a variance application for a sprinkler protection system on a three-story stair "as a means of egress for a total of 1,100 sf of new classroom area on the 2<sup>nd</sup> floor of the building." The description of non-compliance provides:

The building is classified as E-1 Occupancy, with accessory A Occupancies (gymnasiums, auditorium, cafeteria). The building is classified as Type III-N Construction.

16. Exhibit 3 also provides that rule adherence would cause undue hardship: "because of major operational problems in the use of the building or structure." Additional hardship is provided:

Enclosing the existing stairs would result in walls and doors being constructed within the existing corridors, enclosing a number of classrooms with a single enclosure. There is not ample room within the existing corridor to accommodate double-egress doors at the stairs, resulting in doors that would swing against the direction of egress to gain access to other stairs. The walls to

enclose the middle stair would protrude into the corridor, constricting the flow of students in both in emergency conditions and for normal between-class traffic. Walls and doors in the corridors would also impede supervision.

17. On April 2, 2002, the Commission approved the variance described in Exhibit 3. *See* Exhibit 2.
18. Claimant's Exhibit 4 shows a variance application for variance from one-hour fire resistive construction on a three-story stair.
19. Exhibit 4 also provides a demonstration of undue hardship: "because of major operational problems in the use of the building or structure." Additional hardship is provided:

The owner's undue hardship [e]nvolves the need to provide natural light into the interior of the building and provide security for the occupants of building. The code is a hardship when it limits the types of openings allowed into the stair enclosure and does not recognize the use of sprinklers to protect the glazed openings.

20. On April 2, 2002, the Commission approved the variance described in Exhibit 4. The minutes reflect:

...The variance was to allow a stair enclosure on the third level to have sprinklers on the exposed side of the wall only, not on both sides. The sprinklers would be close spaced to wet the glazing. *See* Exhibit 5.

21. Similar variance applications are shown in Exhibits 6 and 7, for the use of automatic sprinklers in open stairs. Compliance with fire safety rules requires fire resistive shaft construction, unless variances are granted as shown for these applications in Exhibit 8.
22. The record reflects that the Commission regularly approves the use of sprinkler automatic sprinkler systems in lieu of fire resistive shaft construction, for multiple-floor stairs. Mr. Bradshaw testified:

The code requires openings through floor levels of a building to be protected. There are exceptions for two-story buildings. When it becomes a three-story building or more, then protection of the vertical openings are required. This applies to any type of opening, whether it be a laundry chute or a stair.

And the code requires what I'm referring to as shaft type construction is a 1 hour fire resistive rating in the cases that we're seeing here today. And that requirement being whether it's a stair or whether it's an opening or a shaft or a laundry chute.

*See* Transcript page 13.

23. Bradshaw additionally provided that laundry chutes and stairs require "similar fire resistive enclosure construction requirements." *Id.*
24. Mara Snyder, counsel and inspector for the Indiana Fire Marshall, testified that she had inspected the laundry chute under appeal in this case. *See* Transcript

page 15. Snyder indicated the laundry chute needed sealing at several joints within the enclosure, in order to insure that fire and smoke would not enter the chutes space for 1 to 2 hours. *Id.*

25. Snyder further testified that it “is physically impossible [for HIE] to correct the violation without major destruction of existing building components.” *Id.*
26. Additionally, Snyder provided, the Commission, “in most cases[,]” “granted the variance in the absence of any rated construction.” In this instance, “all we have is some openings between layers of drywall. We’ve got the drywall there. So the [Fire] Marshal’s office assumed that this variance would be granted based on past history. And in fact, we recommended to the Commission that it be granted and have no objection to its granting.” *Id. at 16.*
28. The Commission regularly approves the use of sprinkler automatic sprinkler systems in lieu of fire resistive shaft construction, for multiple-floor stairs, and HIE has met its burden in showing that a variance should be granted for the laundry chute as provided in Application 02-05-39(c).
27. The record contains no evidence supporting the denial of the variance.

#### **NONFINAL ORDER**

Holiday Inn Express Corydon’s Application for variance #02-05-39(c) is hereby approved.