

**Cause No. 02-34V**

**Name: Cooper Rentals**

**Administrative Law Judge: William K. Teeguarden**

**Date: September 16, 2004**

**Commission Action: Affirmed**

**FINDINGS OF FACT**

1. The FPBSC is an agency within the meaning of IC 4-21.5.
2. The FPBSC is the agency responsible for granting variances to the IBC.
3. IC 22-13 and the IBC apply to this proceeding.
4. At all times relevant to this proceeding, Cooper owned property in Frankfort, Indiana, used as rental housing.
5. At all times relevant to this proceeding, Linda Personette (“Neighbor”) owned and occupied a residence next to the Cooper property.
6. In December of 2001, an existing apartment house on the Cooper property was partially destroyed by fire.
7. The remaining shell was torn down and a new 2 story apartment house constructed with 4 units on the first floor and 4 units on the second.
8. When rebuilt, the apartment house was repositioned on the property so that it is much closer to the Neighbor’s property.
9. Prior to rebuilding, Cooper received a site survey noting his property and the surrounding properties in order to get a local building permit and a state construction design release.
10. The Cooper property and the Neighbor’s property are separated by a property line fence which was in place prior to Cooper’s purchase of his property.
11. The design for the new apartment building placed the foundation of the building approximately 9’ 2” from the fence.
12. The two second story apartments on the neighbor’s side of the building include 4’x 5’ nonrated balconies.
13. Thus the balconies extend approximately 6” over the 5’ property line setback.
14. Since the apartment was rebuilt in 2002, the parties agreed that the 1998 IBC applied.
15. Originally, the Variance had three requests.
16. One of the requests involved the use of nonfire rated doors.
17. The Commission denied this request and Cooper has installed code compliant doors so this is no longer an issue.
18. Another involved additional drywall on the upstairs ceiling which was also denied.
19. Cooper has complied with the drywall requirement hence it is no longer an issue.
20. Section C of the Variance requested relief from having to remove approximately six inches of balcony or installing six inches of rated material.

21. The Commission denied part C also and this is the one remaining issue.
22. Section 705 of the 1998 IBC discusses “Projections” and cross references Section 503.4 which in turn leads to Table 5A.
23. Table 5A requires a one hour fire rating on all projections within 5 feet of a property line.
24. All projections more than 5 feet from a property line may be nonrated.
25. The State Building Commissioner (“SBC”) interprets these sections to require only that portion of the balcony which infringes on the 5’ setback to be fire rated.
26. Both the SBC and the LBO are of the opinion that safety is not materially affected by a 6 inch or less intrusion of a second story balcony into the five foot setback.
27. While Cooper did not provide a dollar value on the cost of compliance, there clearly would be some cost in reducing the size of the balcony or rating the last 6 inches.
28. IC 22-13-2-11 allows the Commission to grant a variance to its rules whenever compliance imposes an undue hardship and the variance is not adverse to the public health, safety or welfare.
29. Since both the LBO and SBC are of the opinion that such a minor intrusion into the 5’ barrier is not a hazard, the Variance should be granted.
30. Cooper made a point of the fact that the Neighbor’s house is approximately 19 feet from the projection. This is immaterial in that the Neighbor has a right to build an outbuilding five feet from the property line which is unprotected and for purposes of this proceeding, we must assume that some day such a building may be built.
31. The Neighbor objects to the grant of the Variance.
32. If the balconies were larger, more numerous, or intruded significantly into the restricted area, the trier of fact would concur, but because of the minimal intrusion of two small balconies, the Variance is not detrimental to the public.

### **NONFINAL ORDER**

Variance 02-08-12(c ) is hereby granted. The petitions for administrative review of Variances 02-08-12(a) and (b) are hereby dismissed.

