

Cause No. 03-39L

Name: The Villa

Administrative Law Judge: William K. Teeguarden

Date: January 7, 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 state agency responsible for building codes and is the ultimate authority over disputes involving building code violations in Indiana.
3. IC 4-21.5 and the State Building Code ("SBC") apply to this proceeding.
4. At all times relevant to this proceeding, The Villa operated a bed and breakfast establishment near 16th and Delaware streets in Downtown Indianapolis.
5. The City of Indianapolis has inspection authority over Indianapolis business establishments to ensure compliance with the SBC.
6. In the course of exercising that authority, the City issued an 8-part correction order in March of 2003 citing SBC violations.
7. By the time of the hearing, all issues resulting from the order had been resolved except items 4 and 8 which both hinge on whether there was a change of occupancy to the 2nd floor which would thus require a second exit and trigger accessibility path of travel requirements.
8. The building in question is a historic structure in the Old Northside Historic District which was built in 1906 as a private residence and so used for a number of years.
9. In 1941, it was occupied by the Army Corps of Engineers who moved out after the conclusion of WW II.
10. Between 1946 and 1970, the building was occupied by the Indianapolis Construction League. Food, including alcoholic beverages, was served at that time on the 2nd floor.
11. From 1970-1974, the Catholic Archdiocese occupied the property.
12. As of 1975, it was used as a catering hall and concert hall and art gallery until 1987.
13. In 1987, it was converted into a Bed and Breakfast with a similar configuration as is present today; i.e. the 3rd floor being used for sleeping rooms and the 2nd floor being used for food service.
14. From 1998-2000, the residence units were not used and the 2nd floor was used as a restaurant open to the public.
15. The current owner bought the property in 2001 and combined the two prior uses. The 3rd floor is once again used for sleeping rooms and the 2nd floor remains a restaurant open to the public for lunch and dinner and for residential guests only for breakfast.
16. The City contends that the conversion to a bed and breakfast in 1987 requires the entire building to conform to the 1985 SBC.

17. The Villa agrees that the 1985 SBC applies to the 3rd story and has undertaken action to correct any deficiencies, however the owner contends there has been no change of occupancy to the 2nd floor since 1946, that it has continuously been used for dining, meetings, or parties as an assembly area.
18. Both parties seem to agree that until the sleeping rooms were added on the top floor, the occupancy was an A-3.
19. The City contends that in 1987, the entire building became an R-2 when the top floor was converted to sleeping rooms. There are currently 3 sleeping rooms plus a two-room suite according to Exhibit S-1.
20. This matter points out two building rules which can conflict.
21. 675 IAC 12-4-11 discusses the change in character or use of a building and requires any such construction to comply with the current building code.
22. This section of the General Administrative Rules can be read as the City reads it; i.e. when sleeping rooms were added to the third floor, the building use changed from A-3 to R-2.
23. On the other hand, 675 IAC 12-4-7(d) specifically states that changes of rules are not applicable to areas of a building not undergoing new construction.
24. This section of the General Administrative Rules supports The Villa's contention that the 3rd floor, which was converted to sleeping rooms is required to meet the building code in effect at the time of the conversion but the second floor is not because it still remains a dining area.
25. As a hypothetical, the issue before us is the same as if a multistory office building suddenly leased out the first floor to a restaurant.
26. Clearly the first floor would change occupancies and needs to meet the appropriate code sections for food and beverage service.
27. However, the question would become "Is the character of the building changed because of the addition of the food service?"
28. The FPBSC has traditionally held that the other floors of the building which remain offices would not have to be remodeled to meet the appropriate codes for the first floor.
29. Because of this, the trier of fact holds that 675 IAC 12-4-7 governs these cases and as long as there is no change of use to the second floor, the 1985 SBC does not apply to that floor.
30. The Order of the City should be modified to reflect that it does not apply to the second floor.

NONFINAL ORDER

The Order of the City of Indianapolis dated March 18, 2002, issued to The Villa is hereby modified as follows:

- a. Item 4 is modified to exclude the 2nd floor from the 2nd exit requirement.
- b. Item 8 is modified so as to not require an accessible route to the second story.

