

**Cause No. 04-48V**

**Name: Henderson Building**

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

**Date: January 7, 2005**

**Commission Action: Affirmed**

### **FINDINGS OF FACT**

1. The Agency and the Commission are agencies within the meaning of IC 4-21.5.
2. IC 4-21.5 and the 1998 Indiana Building Code ("IBC"), which is based on the 1997 Uniform Code, apply to this proceeding.
3. The Commission is both the initial granting authority and the ultimate authority within the meaning of IC 4-21.5 over the grant or denial of Variances to the IBC.
4. At all times relevant to this proceeding, the Henderson building was a newly constructed building replacing a building destroyed by fire across the street from the county courthouse in Bedford, Indiana.
5. The design release for the building, two stories plus a basement, was filed in 2002. Since the 2000 International Building Code was adopted in 2003 as the IBC, the code in effect at the time of filing was the 1998 IBC.
6. The building plans as submitted called for an elevator shaft running from the basement to the second story.
7. The building was completed in 2004 with the elevator shaft completely blocked and no elevator.
8. The City issued a temporary C of O conditioned on getting an elevator installed.
9. Mr. Henderson then asserted that since the basement was not usable, at this time, the building was not required to have an operational elevator and would not need one until the third floor was opened to the public.
10. Henderson applied for the Variance to delete the elevator, which was denied.
11. Henderson proposed installing a wheelchair lift to access the second floor until the building became a three story building.
12. Because the Variance requests relief from Chapter 11 of the 2003 IBC and the 2003 IBC does not apply, the easy way out is to uphold the denial of the Variance on the grounds that a Variance to the wrong code is meaningless.
13. This approach, however, does not resolve the problem; it only postpones the resolution.
14. Chapter 11 of both the 1998 code and the 2003 code deals with accessibility.
15. Section 1101 of the 1998 IBC requires buildings to be accessible as required by Chapter 11.
16. The site view done in conjunction with the hearing was very informative.
17. The Building is a nicely constructed office building which is clearly an asset to downtown Bedford.
18. The first floor is totally accessible and contains a Subway restaurant, a beauty

- salon, and several smaller offices including an attorney's office.
19. The basement is totally unfinished and needs major plumbing and electrical work before it can be occupied.
  20. The entire second floor is a very nice, modern fitness center.
  21. The only way from the first floor to the second is up one of two narrow stairways for which width Variances were previously obtained.
  22. There is no accessible path to the second floor.
  23. Henderson is correct in his statement that at this time, the building must be considered a two story building. Until such time as the basement is code compliant for a Group B occupancy, the Building is not a three story building.
  24. This finding, however, does not solve his problem.
  25. Section 11.4.1.3 of the 1998 IBC sets forth minimum requirements for accessibility of new construction and requires a code compliant elevator to serve each level.
  26. There are exceptions to the elevator requirement and two story buildings can be exempt.
  27. The Building fails to qualify for an exemption on two counts.
  28. First, elevators are not required in 2 story buildings with less than 3000 square feet per story.
  29. The Building contains 8,000-9,000 square feet per story, hence is not exempt.
  30. Further, a two story building is not exempt if it is a shopping mall and a shopping mall is defined as a building with five or more sales or rental establishments. See 675 IAC 13-2.3-131.
  31. The Building houses 5 or more businesses and therefore is a shopping mall. As such, it cannot be exempt from the elevator requirement.
  32. Platform lifts may be used in lieu of an elevator but only under very limited circumstances which do not apply here. Section 11.4.1.3 exception 4.
  33. An exception is also available if structurally impracticable. Since the shaft has been constructed, that exception does not apply.
  34. The grant of variances is governed by IC 22-13-2-11.
  35. There clearly is an economic hardship in requiring the elevator.
  36. There is no more economic hardship to this building than any other two story building of similar size, built under the 1998 IAC.
  37. Before granting a variance, the Commission must not only find hardship but also find the Variance, with proposed alternatives, is not adverse to public welfare.
  38. IC 22-13-4-1 requires the Commission to consider the effect of its rules on new construction on persons with physical disabilities.
  39. Since the building was designed to have the elevator and constructed from the ground up, the Commission decision to deny the Variance and replace the elevator with a chair lift was proper.

## **II. NONFINAL ORDER**

The decision of the Fire Prevention and Building Safety Commission to deny Variance 04-08-5 is affirmed.

