

CAUSE NO. 09-28L

NAME: RIVER RIDGE APARTMENTS

ADMINISTRATIVE LAW JUDGE; GARY W. BIPPUS

DATE: FEBRUARY 5, 2010

COMMISSION ACTION: AFFIRMED

FINDINGS OF FACT

1. The River Ridge apartment complex is located in the northeast quadrant of Marion County, just south of 96th street.
2. A new phase of construction was completed adding additional separate buildings containing multiple apartments to the already existing complex.
3. As part of the new building project additional paved parking spots were provided.
4. A total of seven additional accessible parking spots were added and designated as handicapped spots with one of them being a van accessible parking spot.
5. That one van accessible spot happens to be directly in front of one of the new buildings and generally in the middle of the parking area(s).
6. The pavement of the parking area(s) spreads continuously from one area to the next directly in front of the new buildings and adjacent thereto.
7. On or about April 30, 2009 a Notice of Violation was issued to the owner/ landlord of River Ridge claiming that at least one additional van accessible parking spot was required at one of the new buildings.
8. The paved parking facility is used by residents, their guests and members of the public who come on the premises for their own business or the business of residents or their guests.
9. Any item which is denominated a Finding of Fact which should be considered a Conclusion of Law is hereby incorporated by reference into the Conclusions of Law.

CONCLUSIONS OF LAW

1. The Department of Homeland Security is an agency within the meaning of I.C. 4-21.5.
2. The Agency is the state entity charged with the responsibility of resolving disputes concerning Notices of Violation
3. I.C. 4-21.5 and I.C. 5-16-9 and the Indiana Building Code apply to this proceeding.
4. The Fire Prevention and Building Safety Commission is the ultimate authority within the meaning of IC 4-21.5 with regard to Notices of Violation issued by Local Building Officials.
5. Petitioner's petition for administrative review was timely filed.
6. Van accessible parking spots are defined by I.C. 5-16-9-4 (b).
7. The subject premises has seven new accessible parking spots and one of those is van accessible.
8. The ratio of van accessible parking spots to total accessible spots at the subject premises (1/7) is greater than the ratio required by I.C. 5-16-9-4(b) (1/8).
9. The Local Building Official (LBO) has not alleged nor contended that there is a

lack of accessible parking spots, generally, as compared to the total number of parking spots. Likewise, the Local Building Official has not alleged nor contended that there are too few van accessible parking spots as compared to the total number of parking spaces or as compared to the number of designated accessible parking spots. Rather, the Local Building Official contends that since there are multiple buildings, there needs to be a van accessible parking spot adjacent to each building.

10. Pursuant to I.C. 5-16-9-4(b) a parking facility may group all van accessible parking spots in a single location.

11. Petitioner has admitted that the subject project is subject to the Fair Housing Act (42 U.S.C. § 3601 *et. seq.*) and the guidelines for that statute require the owner/landlord to add a van accessible parking spot whenever requested by a handicapped resident.

12. Given the application of that federal statute, having additional van accessible parking spots required would assume that multiple wheelchair-bound, van-mobile, persons were at the complex at the same time.

13 Any item which is denominated a Conclusion of Law which should be considered a Finding of Fact is hereby incorporated by reference into the Findings of Fact.

DECISION AND NONFINAL ORDER

The Notice of Violation issued on April 30, 2009 is reversed and will be treated as though never issued.

This matter will be considered by the Fire Prevention and Building Safety Commission at its meeting on March 2, 2010 in Conference Room B, Indiana Government Center South, 302 West Washington Street, Indianapolis, IN 46204 at 9:00 AM