

Cause No. 10-32F  
Name: Salamonia Community Center  
Administrative Law Judge: Gary W. Bippus  
Date: October 18, 2011  
Commission Action: Affirmed

### **FINDINGS OF FACT**

1. The Salamonia Community Center is a restored one room, historic, schoolhouse which was restored sometime during 2007.
2. During restoration a ramp intended to provide handicapped access was found to be too narrow to be code compliant.
3. Upon discovery of the lack of compliance Petitioner, through the project architect, applied for a variance to allow the required handrails to be of a smaller diameter and set closer to the wall to create the code compliant wheelchair width so that the Petitioner could avoid having to remove and rebuild the ramp.
4. That variance request was granted at the July 3, 2007 meeting of the Fire Prevention and Building Safety Commission meeting.
5. The Notice of Violation issued by the Fire Marshall's office to Petitioner alleges violations regarding the same ramp and its attendant handrails. Those alleged violations concern ramp landing dimensions not being code-compliant for purposes of allowing wheelchair maneuvering; the ramp width not being code-compliant; handrails not being placed properly, including both not being turned in at their ends and not being continuous around corners; and handrails not being strong enough for their intended purpose and being in disrepair.
6. Petitioner stated in the Variance Application that it submitted for the 2007

variance that, “All handrails will still be in place.” It also stated, “All clearances needed for the navigation for a wheelchair will be maintained,” and that, “No exiting requirements will be compromised.”

7. That variance also provided that the handrails which aren't continuous shall extend 12 inches beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface.

8. None of the handrails on the ramp extend beyond the top or bottom of the ramp walls at all.

9. That same 2007 variance also provided that handrail ends shall be either rounded or returned smoothly to the wall.

10. None of the handrails are turned in to the walls of the ramp at their respective ends. Only one of the handrail corners is continuous around either the inside or outside corners of the turn landing and none of the other corners have a continuous handrail.

11. The 2007 variance also provided that the ramp width between the masonry walls was 40 inches at the time of obtaining the variance and that handrail diameter would be 1 inch and that clearance between the handrail and the wall would be 1 inch.

12. The width between the masonry walls, as measured at four different locations, varies between as little as  $39 \frac{3}{8}$  inches to as much as  $40 \frac{3}{4}$  inches.

13. The handrail diameter is  $1 \frac{5}{8}$  inches and the clearance between the handrails and the wall is  $1 \frac{3}{8}$  inches.

14. In one location on the ramp, the clearance between handrails is  $33 \frac{1}{2}$  inches.

15. The handrails cannot support the weight required by the code because those handrails are only sporadically attached to the ramp walls as many of the attaching brackets were

broken off.

16. The 2007 variance provides that, “All requirements of the 2003 Indiana Building Code, Chapter II – Accessibility shall be maintained,” except for two specific items concerning the diameter and wall clearance of the handrails.

17. At least one wheelchair, when operated by two different persons who do not appear to have upper body disabilities, can pass through most of the ramp.

18. The subject building has two sets of outside stone stairs which allow movement between grade and the floor level of the building. Both sets of stairs have a handrail in the middle which does not extend beyond the top or bottom stair risers parallel to the ground and no rails or guards on the sides.

19. Any item denominated herein as a Finding of Fact which should properly be considered a Conclusion of Law is hereby incorporated into the Conclusions of Law as though fully set out therein.

### **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 building safety within the State of Indiana.

3. I.C. 4-21.5, I.C. 22-12 and 675 IAC 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 respect to Agency actions taken, violations, or alleged violations of the Indiana Building Code.

5. The 2003 Indiana Building Code is the applicable building code since the

remodeling/refurbishing of the Salamonina Community Center took place prior to the adoption of the 2008 Indiana Building Code.

6. In particular, 675 IAC 13-2.4 Chapter 11 (subsequently repealed with the adoption of the 2008 Building Code) specifies the required minimum width between handrails in accessibility ramps (36 inches); the weight that handrails in accessibility ramps must be able to support; the turning of handrails at their ends into the walls to which they are attached and the requirement for handrails in accessibility ramps to be continuous around inside and outside corners of accessibility ramps.

7. The subject building is not in compliance with the 2003 Indiana Building Code in several ways. Those consist of the accessibility ramp width, the improper placement of handrails, the failure to have the handrails turn in to the wall at their ends, the failure to have the handrails run continuously around corners, and the failure to have the handrails extend beyond the top and bottom of stairs.

8. The 2007 variance given by the Fire Prevention and Building Safety Commission only allowed the subject building to use a 34 ½ inch minimum width between handrails rather than the 36 inches required by the particular portion of the 2003 Indiana Building Code.

9. The subject building does not comply with the 2007 variance in that the handrails are not placed as specified as set out in the variance and all other code-required accessibility requirements of the 2003 Building Code have not been maintained.

10. The variance obtained by Petitioner in July of 2007 concerning the Salamonina Community Center does not apply to several of the alleged violations contained in the Notice of Violation issued by the Fire Marshall's office under date of September 9, 2010.

11. The Administrative Law Judge has not been provided with any basis which would

support reversal of the Notice of Violation issued to Petitioner.

12. Any item denominated as a Conclusion of Law which should properly be considered a Finding of Fact is hereby incorporated into the Findings of Fact as though fully set out therein.

### **DECISION AND ORDER**

At its May 2011 meeting, the Fire Prevention and Building Safety Commission remanded this matter to the Administrative Law Judge so that additional evidence could be received with the goal of answering a few specific questions. The thrust of those questions was whether a wheelchair-bound person could negotiate the accessibility ramp at the Salamonina Community Center. An incomplete answer is, yes. At least some people in at least one sized wheelchair can negotiate the ramp part way since the Administrative Law Judge was given a film clip depicting that very thing. That does not mean that all sizes of wheelchair-bound persons could negotiate the ramp. Indeed, a smaller person or child with a narrower wheelchair might find this ramp to be very easy to negotiate. No ramp is going to be perfect for everyone since there could be, and probably are, persons in wheelchairs who are too large, or whose wheelchairs are too large, for even perfectly compliant ramps. The problem here is for those persons who need more space than those in the clip but who could easily negotiate a code-compliant ramp. Saying that this ramp, which is neither compliant with the relevant Building Code nor with the 2007 variance, is, “okay” seems to be more like granting a complete code change than just resolving a set of facts.

Based on the evidence received, there is no question that the people of the Town of Salamonina had a great deal of difficulty dealing with the administration and administrator of the grant that paid for remodeling of the school and with the architect and contractor for that project.

They also appear to be people of good conscience and sincerity. Those things don't, however, add up to a code or variance compliant building.

The decision of the Administrative Law Judge in this matter is that the Notice of Violation issued by the office of the Indiana State Fire Marshall under date of September 9, 2010 to Petitioner is affirmed.