

Cause #: 97-12V
Name: Mikado Restaurant
Administrative Law Judge: William K. Teeguarden
Date: April 16, 1998
Commission Action: Affirmed

FINDINGS OF FACT

1. The Fire Prevention and Building Safety Commission (“FPBSC”) is both the initial granting authority and the ultimate authority with respect to approving variances from the Indiana Building Code (“IBC”) and Indiana Fire Code (“IFC”).
2. IC 4-21.5, 675 IAC 12, IC 22-13 and the 1991 Uniform Mechanical Code apply to this proceeding.
3. At all times relevant to this proceeding, the Mikado Japanese Restaurant (“Mikado”) operated a restaurant in the Circle Center Mall area of downtown Indianapolis.
4. Mikado was designed and built to vent the exhaust from two 40 gallon water heaters into the first floor of the adjoining open air above ground parking garage.
5. Paragraph 4 above violates Section 906(a) of the Uniform Mechanical Code which states that “Vents shall extend above the roof surface”
6. The 1991 Uniform Mechanical Code has been adopted by reference by the FPBSC in 675 IAC 18.1 in 1992.
7. 675 IAC 12-5 allows the FPBSC to grant variances from the various fire and building codes.
8. Variances may be granted upon a showing of undue hardship and no adverse effect on public health and welfare. See 675 IAC 12-5-3.
9. The 1991 Uniform Mechanical Code is a general code which applies to all types of construction.
10. Unquestionably, in most cases, the venting of exhaust from one regulated structure into another regulated structure is a bad idea.

11. In this case, however, the evidence at the hearing shows an unusual set of circumstances which may justify noncompliance with the code.
12. First, the exhaust in question is being produced by 2 small, domestic sized gas hot water heaters, thus the amount of pollutants and heat being vented is considerably less than most commercial operations.
13. Second, the receiving structure is an open air parking garage which itself is designed to vent carbon monoxide, other exhaust fumes, and engine heat from several hundred cars.¹
14. Compliance would require the vent in question to be raised several stories and create unneeded expense.
15. Under the limited circumstances of this case, variance A 97-4-5 filed by Mikado on February 20, 1997, should be approved.

NONFINAL ORDER

Variance A 97-4-5 requested by the Mikado Japanese Restaurant is approved.

¹ The evidence shows the garage in question is usually full for Colts home games, thus the exhaust system is built to handle a full load of vehicles all trying to leave at the same time.