

Cause #: 97-39

Name: Cosseyleon Apartment

Administrative Law Judge: William K. Teeguarden

Date: August 10, 1998

Commission Action: Affirmed

FINDINGS OF FACT

1. The FPBSC is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 22-12, 675 IAC 12, and section 3802 of the IBC apply to this proceeding.
3. During 1994 and 1995, the building in question was rehabilitated according to plans approved by the local building official but the plans were never submitted to the state.
4. The building in question is an old stone building in East Chicago.
5. As part of the rehabilitation effort, a dormer was added to the second floor thus adding 2 more apartments and one more floor to the building.
6. The local building official for Lake County refused to issue a certificate of occupancy because of the failure to have the plans released by the state.
7. Cosseyleon then contacted a design professional and filed plans with the state.
8. Plan release was accomplished in March of 1997 with several correction orders.
9. Only one of the correction orders was a problem for Cosseyleon and it was the one involving the requirement under the IBC that apartment houses exceeding 2 stories must be sprinklered.
10. Cosseyleon then contacted the current design professional and decided to apply for a variance.
11. The FPBSC may grant variances from the SBC pursuant to IC 22-13-2-11.
12. An applicant qualifies for a variance under IC 22-13-2-11 if there is undue hardship and noncompliance is not adverse to public health, safety, and

welfare.¹

13. The variance application at issue would delete sprinklers which are required by UBC 3802 (h) in apartment houses of 3 stories or

¹ Historic preservation issues can also be used to qualify for a variance but that has not been raised in this particular case.

more²

14. The evidence at hearing shows that the cost of sprinklering prior to renovation, counting taps and back flow preventers, would be in excess of \$25,000 and would be of limited value because the current water flow in the area of the apartment is 250 gal/min. which might not be enough to allow the system to work properly.
15. Because of the neighborhood around the apartment house, the value of the property is in current income and not long term appreciation.
16. The equal alternatives involve the installation of a state of the art automatic alarm system and fireproof construction.
17. Being primarily a fire resistant structure with plaster walls, its fire rating is between 1 and 2 hour construction and the exits are 2 hour rated with 2 exits per unit.
18. In the basic variance application and evidence presented, the applicant has shown hardship and provided some alternatives.
19. The motion to deny the variance appears to be based on lack of equivalency.
20. Moreover, at the same commission meeting in September of 1997, the FPBSC approved variance C 97-9-1 submitted by Culver Military Academy.
21. The Culver variance requested the deletion of sprinklers in the 3rd floor of a barracks/dormitory.
22. The equivalencies cited are a new fire alarm system and use of non-combustible materials in construction.
23. From an examination of the tapes of the September commission meeting, a driving factor in the Cosseyleon denial is the fact that it was an after the fact request for a variance.
24. This appears to be the only distinguishable difference between the Cosseyleon variance and the Culver variance.
25. IC 22-13-2-11 does not indicate that the variance procedure involves penalties or sanctions.

² The IBC now uses the 1997 UBC but 904.2.9 would still require sprinklers.

26. The standards deal with hardship and equivalencies, not with the timing of the filing.
27. Further, the maker of the motion to deny appeared somewhat concerned about local building and fire official comments.
28. Both Gilbert Diaz, Building Commissioner for East Chicago, and James Dawson, Fire Chief, filed documents in support of the variance saying the alternatives were sufficient.
29. Since the local officials are satisfied, the FPBSC granted a very similar variance to Culver at the same meeting, hardship has been shown, and alternatives have been provided, the variance should be granted.

NONFINAL ORDER

Variance C97-9-7 is approved.

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