

Cause No: 99-2L

Case Name: 3905 West 96th Street

Administrative Law Judge: William K. Teegarden

Date: June 15, 1999

Commission Action: The Fire Prevention and Building Safety Commission reversed the nonfinal order of the administrative law judge on October 4, 1999. On judicial review, the Marion County Superior Court found the action of the Commission to be “. . . arbitrary and capricious and unsupported by substantial evidence.” and reversed the October 4, 1999, decision of the Commission. See Cause Number 49D01-9911-MI-001649 entered December 13, 2000.

FINDINGS OF FACT

1. The FPBSC is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5, IC 22-13, and 675 IAC 13 apply to this proceeding.
3. The FPBSC is the state agency responsible for administering, enforcing and interpreting building codes in Indiana.
4. Jurisdiction over this matter by the FPBSC is obtained pursuant to IC 22-12-2-7 (c) which requires the FPBSC to review appealed orders of local building officials and allows administrative review pursuant to IC 4-21.5-3-7.
5. At all times relevant to this proceeding, the Petitioner operated a western apparel and tack shop in part of a building known as 3905 West 96th Street in Marion County, Indiana.
6. Shortly after opening for business, a duly authorized building official of the City inspected the premises and wrote an Order for a violation of the 1998 IBC which was appealed to the FPBSC.
7. The parties agree that the 1998 IBC applies.¹
8. The parties also agree that the 1998 IBC requires two exits from the premises and that the two doors in the front of the building are too close together to count as more than one required exit.
9. There is an exit to the rear of the building. At issue is whether or not

¹ The 1998 IBC became law on April 30, 1998. See 675 IAC 22-2.2-1. It is based on the 1997 Uniform Building Code (“UBC”)

that exit meets the requirements of the IBC to qualify as the second exit.

10. The City contends that the rear exit cannot be considered the required second exit because of Section 1004.2.2 of the UBC.
11. The Petitioner contends that Section 1004.2.2 of the UBC has not been violated.
12. The premises are not sprinklered.
13. Section 1004.2.2 of the UBC states: “The required access to exits from any portion of a building shall be directly from the space under consideration to an exit or to a corridor that provides direct access to an exit. Exit access shall not be interrupted by intervening rooms.

EXCEPTIONS:

1. (Not applicable)
2. Where access to only one exit is required is from a space under consideration, exit access may occur through an adjoining or intervening room, which in turn provides direct access to an exit.
3. (Not applicable)
4. Where access to more than one exit is required from a space under consideration, such spaces may access one required exit through an adjoining or intervening room, which in turn provides direct access to an exit. All other required access to exits shall be directly from the space under consideration . . .
5. (Not applicable)
6. (Not applicable)

Hallways shall be considered intervening rooms”

14. The retail sales area has a front door providing direct access from the building.
15. Section 1004.2.2 exception 4 permits the second access pathway to exit through an intervening room.
16. At issue is approximately 33 square feet of space near the rear portion of the retail sales area.

17. This area provides access to the dressing rooms. It is also used as a bulletin board area.
18. This area also provides access to a door to an office which has the rear door to the exterior and is obviously an intervening room.
19. If this 49 inch by 8 feet area is considered a hallway as the City contends, then since a hallway is an intervening room under Section 1004.2.2, the exiting path to the rear door requires passage through two intervening rooms rather than through one intervening room having direct access and thus does not comply with the UBC.
20. If this area is considered an alcove or a part of the retail sales area as is the contention of the Petitioner, then the office is the only intervening room and it has direct access to the exterior hence the code requirements are met.
21. The UBC does not contain a definition of "hallway".
22. The plans and photographs introduced into evidence lead the trier of fact to conclude that both the design and use of the area in question is part of the retail sales area and not a hallway.
23. The above conclusion would likely be different if any of the following were true:
 - (a) the width was in the 36-40" range (36" is the minimum width for a hallway) instead of 49";
 - (b) the length was slightly longer than 8-9 feet thus creating more of a "hallway" look, or
 - (c) the area was not so obviously used in connection with the retail sales aspect of the store.
24. Since the area is over a foot wider than the minimum hallway, width, is not very long, and clearly involved in the retail sales operation of the store, the area is not sufficiently like a hallway as to violate the IBC.
25. The Order should be vacated.

NONFINAL ORDER

Notice of Violation STR98-04358 issued by the City of Indianapolis issued to D.B. Mann Development for the property at 3905 W. 96th Street on October 20, 1998, is hereby vacated.

