

Cause #: 99-34V  
Name: Relax The Back  
Administrative Law Judge: William K. Teegarden  
Date: October 6 , 1999  
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 22-13, and the 1998 Indiana Building Code (“IBC”) apply to this proceeding.
3. The FPBSC is the ultimate authority over the granting of variances to the IBC.
4. At all times relevant to this proceeding, the Store operated a retail establishment devoted to the sale of furniture and other products which help relieve back pain and stress.
5. The sales area in question is approximately 2100 square feet and is located in a strip mall in Northern Marion County.
6. The store agrees that Table 10-A of the IBC (Exhibit 1) allows occupancy by approximately 70 people and thus requires two means of egress.
7. The Store has only one means of egress which complies with the IBC requirements.
8. In July of 1999, the Store petitioned for a variance from the two means of egress requirement.
9. The FPBSC granted the variance with the following three conditions:
  - a. A sign posted which limits the maximum occupancy to 30 people.
  - b. Emergency exiting only through the rear door.
  - c. Yellow striping on the floor leading to the emergency exit.
10. The Store took administrative review of the first condition only.

11. Table 10-A of the IBC also specifies that as long as the maximum allowed occupancy load is under 50 persons, only one means of egress is required.
12. The Store produced evidence that sometimes physical therapy classes visit the premises and when this happens, counting employees, there can be 30-40 people.
13. The Store contends that there is no reason why a maximum occupancy load of 49 persons should be allowed since the IBC allows occupancy of under 50 people to have only one means of egress.
14. The Store has a valid point. The minutes of the July meeting do not disclose any particular reason for limiting occupancy to less than 49 people.
15. Further, the minutes of the February meeting of the FPBSC show that in the case of Variance 99-2-11, Kids N Motion, the FPBSC approved an identical variance in the same strip mall with the condition that the occupancy load be posted at 49.<sup>1</sup>
16. As long as the occupancy is restricted to 49 persons, there is no apparent hazard and meets the spirit of the IBC.
17. The first condition of the Variance should be changed from a limit of 30 people to 49 people.

### **NONFINAL ORDER**

Variance 99-7-51 granted to Relax the Back by the Fire Prevention and Building Safety Commission on July 7, 1999, is hereby modified to require a maximum occupancy load of 49 people instead of 30 people.

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<sup>1</sup> Because of their collective importance, the relevant February minutes, July minutes, and Exhibit I are attached to the back of this decision.

