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2019 Group B – Appeals STAFF ANALYSIS MEMO

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August 19, 2020

STAFF ANALYSIS MEMO TO APPEALS BOARD
ON JAKE PAULS APPEALS ON 2019 GROUP B CODE CHANGES
August 19, 2020

To: The Appeals Board regarding 2019 Group B Appeals

From: Mike Pfeiffer, P.E., Senior Vice President of Technical Services

Appellant, Jake Pauls, who identifies himself as an Independent Consultant in Building Use and Safety, has filed separate appeals on two code changes in the IRC:

- RB81, relating to grab bars in bath and shower
- RB116, relating to stairways

The appellant's appeals request that the matters be sent back to the Committee for further consideration of evidence.

Relevant Council Policies

Council Policy CP 1-03 sets forth the procedures for appeals of "any action or inaction," including matters related to code development. For purposes of the appeals at issue, two sections of this policy are of particular relevance.

- Section 6.3.7 provides:
Review by the Appeals Board shall be limited to matters of process and procedure. The Board of Appeals shall not render decisions on the relative merits of technical matters.
- Section 6.3.8 provides:
In order to sustain the appeal, or any part thereof, the Appeals Board must find that there was a material and significant irregularity of process or procedure.

Bath and Shower Grab Bar Appeal

In "Specific Description of the Issue Being Appealed," appellant states:

- "In relation to IRC proposal RB81-19—on new home bathtub and shower grab bars, submitted by the Appellant, the ICC process has badly failed hundreds of millions of people to whom the ICC owes a duty to provide reasonably competently produced, and timely model codes addressing critical issues..."
- "[I]t should be clear—right from the beginning of this Appeal application—that the focus on installation of grab bars, at the time of original construction, is the most appropriate measure to be addressed at this time in the IRC."

In "Statement Describing Precisely Why the Issue Is Being Appealed," appellant states:

- "This will significantly reduce predictable, preventable injuries in people's use of bathtubs and showers, in homes."
- "The issue is too important to be dismissed in the manner the relevant ICC Committees has done this year after the Appellant works so hard last year, in Group A, to find the best place in the I-Codes to begin addressing the problem."

- “The opposition to this for the I-Codes, particularly the IRC, lacks a sound public health foundation as well as lacking evidence for ignoring the problem as the Committee action suggests.”

In “Statement Indicating the Requested Remedial Action,” appellant states:

- “The responsible Committee has to consider the evidence competently and do so impartially—not biased by their occupation, etc.—rather than ‘blow-off’ a serious, well documented proposal with the weak Committee Reason statements provided such as provided last spring, e.g., ‘The dimensions are not sufficient for all medical conditions.’ The other two reasons, each also deeply flawed, were:

‘These requirements should be optional’ and

‘It might be more palatable if only the blocking had to be installed.’”

- “Starting with formal reconsideration by the responsible Committee (International Residential Code Committee–Building), we need all its members to do their duty to consider the facts fully and without bias—blatantly an issue for the one-third of members formally representing NAHB. (Future ICC appointments should change that policy which exists due to a *quid pro quo* agreement between ICC and the NAHB dating back to the mid to late-1990s. That should send— to the courts of law— both of the parties to the agreement, the sooner the better. The agreement has proven to be very much against the public interest and it certainly makes ICC appear to be ethically challenged, if not also—eventually—legally vulnerable.)”
- “There also should be the opportunity—indeed a requirement—for all those testifying on an issue to provide documentation for their assertions.”
- “The assertions by Committee members and those testifying should also pass the ‘laugh test’ on claims such as such as grab bars ‘should be optional.’ That is akin to arguing that new automobiles do not require brakes or reliable steering systems, they should be optional.”
- “My suggestion to ICC: please respond to well-developed proposals specifically and in detail: i.e., what are the specific aspects of the proposal that have errors or weaknesses, so that instead of wasting yet more years, ICC can finally get the codes that befit its lofty ambitions and use of ‘SAFE’ in its Web URL.”
- “Hopefully, the full ICC Appeal process will make up for the perfunctory treatment given by the Committee. Otherwise, the next option is to take this matter to the courts where evidence is treated with more respect.”

Stairways Appeal

In “Specific Description of the Issue Being Appealed,” appellant states:

- “The most dangerous and most problematic in terms of usability and safety are home stairways; yet the ICC has—since its earliest days (in the late 1990s)—had an agreement, drastically impacting homes stairs, with the National Association of Home Builders (NAHB). This agreement unreasonably biases the development and adoption of the ICC International Residential Code (IRC) in return for NAHB’s support in reducing, if not preventing, the adoption and use of superior, more-evidence- based, public health-oriented model codes and safety standards produced by the National Fire Protection Association (NFPA).”

- “[T]his Appeal focuses on the quality and timeliness of the IRC-development process and product, especially relative to ICC’s respect for and use of public health, ergonomics, 3 economics, and other sources of relevant evidence.”
- “[T]here are abundant reasons for ICC to act, in time for its 2021 IRC edition, to institute stairway usability and safety requirements that are equivalent in performance to relevant stairway requirements in the International Building Code (IBC)...”

In “Statement Describing Precisely Why the Issue Is Being Appealed,” appellant states:

- “This will significantly reduce predictable, preventable injuries in people’s use of stairways, including single steps, in homes. If not completely preventable, this will also mitigate—e.g., with more-functional handrails—the severity of missteps (departures from normal pedestrian gait) and falls.”

In “Statement Indicating the Requested Remedial Action,” appellant states:

- “The responsible Committee has to consider the evidence competently and do so impartially—not biased by their occupation, etc.—rather than ‘blow-off’ a serious, well documented proposal with the weak Committee Reason statements provided last spring. (See p. 13 for full, exact text from Committee.) At the very minimum, the Committee needs to stick to facts...”
- “The task is not so much to gather more ‘empirical data,’ but to carefully examine and utilize what is already well identified and set out in the provided information.”
- “Getting to specifics, I would have much preferred more work on the part of the Committee to set out how a ‘work group’ would refer to and pick up on the immense work done by CABO BCMA in the 1980s and similar committees...”
- “More practically, recognize that some proposals take more work and mental effort than the majority of proposals or comments on the agenda. First of all, recognize which ones address really significant safety and regulation issues (rather than market share skirmishes—especially when millions of injuries must be mitigated, if not prevented—and address them accordingly. RB116-19 is one of those issues, along with RB112-19 (plus RB81-19 on bathing/showering grab bars). These deserved more thoughtful Committee Reason statements, particularly when relatively well-justified, much-needed proposals are ‘Disapproved.’”

Appellant is critical of how ICC has dealt with the issue of stair step design:

- “ICC, now an ethically-compromised monolith, also needs to focus at least as well as BCMA did on the home stairway issue. So far ICC, in over 25 years, has made less progress on home stairway safety issues than BCMA did between 1982 and 1993—all done with buy-in from all model code bodies and NFPA—without any taint of a quid pro quo deal with ‘Strategic Partner’ NAHB.”

Appellant provides an extensive history of their prior efforts, which have included appeals, to pass code change proposals related to stairway design.

In addition, the appellant provides extensive information related to what they contend are the safety benefits of the proposed code change.

Conclusion

Appellant makes substantive arguments about the technical merits of the proposals in question, and is critical of ICC, its code development process in general, and its relationship with NAHB. However, the

appellant does not articulate a process-based rationale for either of his appeals, and points to no specific procedural deficiency. The appellant's complaint in both instances is based only on the failure of the decision-makers to adopt his proposals.

Appellant has not presented an identifiable "process and procedure" to the Board of Appeals, as required by CP-01. The Committee Action Hearing was conducted in accordance with established procedure with testimony being received, questions being asked, and the Committee deliberating and taking action. Appellant is clearly dissatisfied with the outcome of the process, but as stated in CP-01, "the Board of Appeals shall not render decisions on the relative merits of technical matters."

Therefore, staff recommends that the appeals be denied and referred to the appropriate Code Action Committee for consideration in the 2024 Code Development Cycle.