

BOARD OF APPEALS

July 21, 2016

Members Present: Chairperson Wayne Larson, Harold Thompsen, Dave Obermiller and Mark Honzay.

Others Present: Bruce Taralson, Ryan Erickson, Christine Rose, Gretchen Morlan, James Showalter, Michael Moss, Chelsey Steinlicht, Sarah Myers, Coreen Ruona, and Ruby Kolpack.

Chairperson Larson called the meeting to order. Mr. Thompsen moved to approve the minutes of the April 21, 2016 meeting, and Mr. Obermiller seconded the motion. All members present voted aye and the motion was declared carried.

Mr. Taralson thanked the Board members for meeting and welcomed new member, Mark Honzay. He further explained that since the last meeting, memberships for Mr. Joel Davy and Mr. Terry Welly have expired. Mr. Taralson thanked Mr. Davy and Mr. Welle for their hard work and dedicated service.

Item 1 – Review of the appeal to the requirements of the 2012 IBC, Table 2902.1 – Minimum Number of Required Plumbing Fixtures: E Occupancy and I-4 Occupancy.

Mr. Taralson presented the appeal to the requirements of the 2012 IBC, Table 2902.1 – Minimum Number of Required Plumbing Fixtures: E Occupancy and I-4 Occupancy, as interpreted by the Building Official. He explained the progression of the table requirements. Initially, the Uniformed Plumbing Code (UPC) Table was used but eventually amended out of use therefore requiring designers to follow the requirements of the International Building Code (IBC). He further explained how the occupancy of a building is determined but noted that the occupancy doesn't always correlate to the Plumbing Fixture table. For example, a daycare could be considered a residential, institutional, or educational occupancy. He stated that the issue at hand became clear while in the process of adopting the 2015 IBC. Mr. Taralson presented a handout to the Board from the IBC that did not display a tub or shower requirement but instead indicated that for types of occupancies not shown, each occupancy shall be considered individually by the Building Official. The 2015 IBC has since clarified the issue at hand and lists the minimum number of plumbing fixtures based on use of space. Bright Futures Learning Center falls under an I-4 occupancy based on the information provided and reviewed. Mr. Taralson gave two examples of different states and how they are successfully using the requirements of Table 2902.1. He further clarified that the Health Department and Building Inspection's Department perform inspections for different reasons. He stated that the Health Department does not make decisions on building codes.

Mr. Thompsen requested Mr. Taralson to remind the Board of its authority and to clarify whether or not the issue at hand revolves around an architect requesting the project to be considered an E occupancy. Mr. Taralson stated that the project in question is an I-4 occupancy and if the center provided care for children ages 2.5 and older, the establishment would not be required to install a shower/bathtub.

Chelsey Steinlicht, Director of Bright Futures Learning Center, approached the Board and presented information regarding her request for an appeal to the requirements of the 2012 IBC, Table 2902.1 – Minimum Number of Required Plumbing Fixtures: E Occupancy and I-4 Occupancy. Ms. Steinlicht stated that the ruling for a necessary bathing/showering area within a childcare center should not be implemented due to its safety and hygiene concerns. She further explained that the use of the shower is unclear and has not been required for any other child care center in the community to the knowledge of both licensors and the Child Care Aware program. Ms. Steinlicht explained that the Director of Environmental Health, Grant Larson, stated in a letter to her, "There have not been showers that have needed to be installed in child care centers currently or in the past and these

centers have met all the health department's compliances. We do not require the use of showers in a child care facility." She went on to say that Bright Futures Learning Center is an educational facility that does not cater to 24-hour care; hours of operation are 7:00am to 6:00pm, Monday through Friday. Ms. Steinlicht explained that there was an attempt to re-categorize Bright Futures Learning Center as an E occupancy, similar to that of an elementary school or preschool setting in order to avoid the use of the shower/tub. She stated that it was determined by Mr. Taralson that since the facility caters to infants, the facility falls under an I-4 occupancy thus requiring a shower/tub. She explained that bathing children after they have soiled their clothing is a health concern – the feces and microbes, although not visible, can spread many illnesses to other children using the same bathroom facility. The feces and microbes can also be tracked through our building on children's shoes and feet, thus spreading germs to other classrooms. Another concern is that the teacher to child ratios that are implemented and governed by the licensing department, would be incorrect, and it is mandatory that the teacher to child ratios be kept in alignment with licensing regulations at all times. Ms. Steinlicht gave an example that if a child were to use the shower, it would require a teacher to be in the visual line of the child during the showering of the child, thus removing the supervision from other children in the classroom. She further explained that there are additional concerns in classifying Bright Futures Learning Center as an I-4 occupancy facility as learning begins at birth and not at 2.5 years of age.

Mr. Larson requested clarification on the current method of child clean-up and whether or not there is privacy allowed to the children during this time. Ms. Steinlicht stated that there is currently a bathroom located in each classroom. However, requiring a shower for a child would remove the child and teacher from the classroom to transport the child to a centralized bathroom that includes a tub or shower.

Mr. Obermiller inquired whether or not the center currently employs additional staff to assist classroom teachers with tasks such as child clean-up. Ms. Steinlicht stated that additional staff members are employed, however, their daily tasks and schedules do not always allow time for immediate classroom assistance.

Mr. Honzay stated that there appeared to be a hang-up with having to use the shower. He inquired if an issue would remain if a required tub and shower is installed but never used for its intended purpose. Ms. Steinlicht stated that she struggles with the reasoning behind having to build something that will never be used along with the cost of fixtures that will never be used.

Mr. Honzay inquired if there could ever be an instance of when a shower is needed and gave an example of hot soup being spilled on a child. Mr. Steinlicht stated that there are effective protocols already in place to deal with burns.

Mr. Obermiller stated that he noticed the code requires one bathtub/shower. He inquired if the code requires a shower specifically or if a bathtub is allowed instead. Mr. Taralson confirmed that the code requires either a bathtub or a shower but not both.

Sarah Myers of Childcare Aware North Dakota approached the Board. Ms. Myers stated that providing a bath or shower to an infant or child is a liability as it could be a source of an injury. She further explained that disinfecting a bathtub or shower after its use would be required, and a shower would be a more hygienic choice of the two, but not age appropriate for an infant. Ms. Myers stated that classrooms teachers are encouraged to take care of as much child cleaning as possible within the classroom to avoid a decrease in visual and auditory supervision. Ms. Myers explained the current child cleaning process to the Board which has been in place for 15 years. She stated that there have been zero instances of fecal induced illnesses in the area. In addition, she stated that the current clean-up method greatly reduces the chance of inappropriate staff contact with a child.

Mr. Obermiller inquired if having two sinks per classroom would be preferred over one and if a small tub could replace one of the sinks. Ms. Myer stated that two sinks would be ideal, one for food preparation and one for clean-up thus avoiding cross-contamination and ultimately requiring a teacher to leave the classroom. Ms. Myer inquired if a portable shower would be allowed. Mr. Taralson explained that all plans submitted are reviewed and code compliance is determined on a case by case basis.

Coreen Ruona of Cass County Social Services approached the Board. Ms. Ruona explained that North Dakota Child Care Center Early Childhood Services does not require child care centers to have a shower installed in their facilities.

Ruby Kolpack of Cass County Social Services approached the Board. Ms. Kolpack stated that her department works closely with Child Protective Services. She shared her concern with the Board that bathing or showering a child while staff is unsupervised provides an opportunity for inappropriate staff contact with a child.

Mr. Thompson moved to deny the appeal to the requirements of the 2012 IBC, Table 2902.1 – Minimum Number of Required Plumbing Fixtures: E Occupancy and I-4 Occupancy, and Mr. Larson seconded the motion. All members present voted aye and the motion was declared carried.

Board discussion ensued regarding the reasoning behind their decision to deny the appeal request. Mr. Thompson stated that the intention of this meeting was solely to determine if Mr. Taralson's interpretation of the code was correct. He further explained that the Board's only authority in this case was to determine whether or not the Building Official's final determination was in alignment with the code.

Mr. Thompson stated that the Board recently completed a six-month review of the 2015 International Code Council Series and the City of Fargo proposed amendments. He explained that if this issue had been brought to the Board's attention during the review process, the Board would have considered an amendment to the code at that time. Mr. Thompson stated that the Board would, however, support an appeal to the Board's decision to the City Commission office for consideration of a change in the code.

Mr. Thompson moved to amend the decision to maintain the denial of the appeal with the recommendation to appeal to the City Commission office for a change in the code. Mr. Obermiller seconded the motion. All members present voted aye and the motion was declared carried.

Item 2 – Election of Officers

Mr. Thompson nominated Mr. Larson for Chairman. Mr. Honzay seconded the nomination. Mr. Larson nominated Mr. Honzay for Vice-Chairman. Mr. Obermiller seconded the nomination. All members present voted aye and the motions were declared carried.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Bruce Taralson
Acting Board Secretary