



ICC APPEAL HEARINGS | August 26, 2020

ICC Presentation on Committee Reconsideration

Appeal of Code Changes RB81 – 19 & RB116 - 19

Presentation Outline

This presentation will:

- Outline the scope of submitted appeals on code changes RB81 & RB116
- Provide details of the Committee Action and Public Comment Hearing processes related to the appeal
- Compare the scope of the appeals vs the appeal procedures of ICC Council Policy 1 *Appeals* which limits the review of the Appeals Board to “matters of process and procedure” and the hearing provisions of CP28 *Code Development*
- Provide ICC’s conclusion and recommendation on the disposition of the appeals on RB81 & RB116

Scope of Appeal: RB81

- Proposed new technical requirements for bathtub and shower grab bars need to be addressed in the IRC to reduce “predictable, preventable injuries”
- The opposition to the proposal “lacks a sound public health foundation”
- The appellant notes “there also should be the opportunity- indeed a requirement- for all those testifying on an issue to provide documentation for their assertions”

Scope of Appeal: RB81 cont'd

- The appellant notes that 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...”, referring to the action of the IRC-B code committee
- The appellant takes issue with the code committee’s reason for disapproval
- The appellant states “The responsible Committee has to consider the evidence competently and do so impartially...”
- The appellant requests “Starting with formal reconsideration by the responsible Committee.....we need all its members to do their duty to consider the facts fully and without bias” and goes on to cite his concerns with the make up of the committee with 1/3 of the members representing NAHB

Scope of Appeal: RB116

- Proposed technical requirements to replace the current stair geometry provisions in the IRC in order to “significantly reduce predictable, preventable injuries in people’s use of stairways”. The appellant notes the requirements in the IRC should be equivalent in performance to the requirements in the IBC.
- Extensive history and information on stair geometry is cited
- Appellant notes that the agreement on committee composition between ICC and NAHB “unreasonably biases the development and adoption of the ICC IRC”
- The appellant cites the manner in which the IRC- B code committee acted at the Committee Action Hearing, stating, “The responsible Committee has to consider the evidence competently and do so impartially – not biased by their occupation”

Scope of Appeal: RB116 cont'd

- Appellant further states that some proposals require a more in-depth effort (“more work and mental efforts”) than the “majority of proposals or comments on the agenda”
- Regarding the action taken by the committee, the appellant notes, “Getting to specifics, I would have 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 BCMC in the 1980’s and similar committees”

Committee Action and Public Comment Hearing process

- Both hearings are regulated by CP28 *Code Development*. CP28, as with all ICC Council Policies, are developed and updated by the Code Council Board of Directors
- The intent of the hearings is to permit interested parties to present views for consideration by the code committee at the CAH (5.1) and eligible voters at the PCH/OGCV (6.1, 7.5.9.4, 8.0)
- Time limits are established and announced prior to the hearings in accordance with Sections 5.4.7. & 7.5.8. The moderator presides over the hearing in an effort to achieve fairness and due process at the hearings

Committee Action and Public Comment Hearing process (cont'd)

- CAH Hearing steps:
 - Testimony in support
 - Testimony in opposition
 - Rebuttal in support
 - Rebuttal in opposition
 - Code committee questions are asked of testifiers during the public portion of the hearing
 - Following the public portion of the hearing, a motion is typically made by a committee member, discussed and voted upon. A 50% majority is required for a motion to be successful
- PCH hearing steps follow a similar process except the initial motion is to sustain the CAH action and the voters are the validated eligible voters of ICC. This vote establishes the agenda for the OGCV. To change the CAH action requires a 2/3 vote.

Scope of appeals vs CP1 & CP 28 procedures

- Appeal: The scope of the appeal is based on code change technical issues
 - CP1: “The Board of Appeals shall not render decisions on the relative merits of technical matters”
- Appeal: The appellant disagrees with the testimony in opposition to the code changes
 - CP28: The hearing was conducted in accordance with CP28. CP28 stipulates that following the conclusion of testimony in support, “those opposed thereto, if any, shall have the opportunity to present their views”. CP 28 does not dictate what is considered an acceptable opposing view
- Appeal: The appeal cites concerns with the IRC-B code committee’s reason for their recommended action
 - CP28: The hearing was conducted in accordance with CP28. CP28 requires that the “committee vote shall be supported by a reason”

ICC Conclusion

- The appeals provide substantive arguments about the technical merits of RB81 & RB116
- The appeals are critical of ICC, the process in general and ICC's relationship with NAHB
- The appellant does not cite process or procedural deficiencies related to the processing of the code changes or the hearing procedures
- The appellant disagrees with the code committee action for Disapproval based upon his arguments provided in support

ICC Recommendation

ICC has implemented a committee process outside of the Code Development Process for issues to be considered and debated – Code Action Committees (CAC). In the CAC committee setting, the time limits/presentation limits of CP28 do not apply. CAC's are regulated by CP 31 *Code Action Committees*

- Staff recommendation: Deny the appeal and refer the technical matters to the Building Code Action Committee which allows for additional presentation of documents without the confines of time limits. It is then the prerogative of the BCAC as to whether or not to support the code changes/sponsor the changes in the 2024 Code Development process. The IRC – B cycle starts in Jan/2022.