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Subcommittee on Regulations Meeting Minutes – June 28, 2023
Teleconference

This meeting was open to the public and began approximately 10:15 AM.

Subcommittee member attendance:

Jeff Dougan (JD), Chairperson
Carol Steinberg (CS), Vice Chairperson
Paul Logan (PL)
Mike Kennedy (MK)
Elizabeth Myska (EM)
Deborah Ryan (DR)

Division of Professional Licensure Employees attendance:

William Joyce – AAB Executive Director (WJ)
Jamie Dalton – Board Counsel (JaD)
Bradley Souders – Office Support Specialist (BS)

JD opened the meeting for Roll Call:

CS, MK, PL, EM, DR

1. 10:19 AM Minutes
Motion to Approve minutes by PL
2nd by DR
By Roll Call JD/A, CS/A, MK/A, PL/Y, EM/Y, DR/Y
2. 10:21 AM 1002.2
WJ: These are mostly the same except for minor exceptions
DR: Question about definition of “attraction”
WJ: Defines definition of attraction from proposed 521 regs
CS: Question about exception for 1002.2 protruding object, what would an example be
WJ: I think the exception here is for a something like a fun house where it wouldn't necessarily be required to comply with protruding objects



CS: I disagree I think it should say if impossible, I like the ADAG version where it says not functionally feasible

WJ: that needs review as well because that would be what the variance process is for

CS: I agree, I think you would get a variance for that

WJ: there is another place where we talk about feasibility that does not require a variance and that is the travel between two levels that are less than one story, we look for agreement from the building official

PL: what if it was new construction

WJ: it would be up to the building official to determine feasibility

CS: reluctant to throw the whole section out, add something to the feasibility piece that says a variance can be requested

WJ: then we should strike the section

DR: Since the board has never taken jurisdiction over an amusement ride, I don't think the Board has jurisdiction, but what is the building officials role in amusement rides

WJ: depends, there is a separate permit process through OPSI for amusement rides

DR: will they be responsible for enforcing this?

WJ: the building official would be as far as the ramps, the OPSI part is more focused on the mechanicals of the item

DR: my concern is who is enforcing 521 on amusement rides, or if its another agency how do we get them to enforce it

PL: in Barnstable is a team of the licensing people and the building department

DR: I understand the concession stands and all of that but when it comes to the actual rides I don't know who enforces that

JD: I would venture that if the 2010 ADA is updating it to cover rides then we should also cover it, and we can work with the amusement board to ensure coverage. Does the ADA cover the temporary rides

DR: The ADA is not a building code so its going to cover a host of things that the AAB doesn't, building officials don't enforce ADA. I don't want to debate this, I don't think we've ever had jurisdiction over this and the statute hasn't been changed to allow it. I'm not sure this is the place for it.

JD: I think moving forward we should just process this until this question gets resolved, lets have legal look at it to see what we can cover so we can have something ready for when/if we get word that we cover this

DR: if it isn't covered we reserve it until it is

CS: was this changed in 2018

JD: this is a 2015 draft regulation, the currently enforced one is 2006. This is a draft of the old subcommittee, I wonder if this is the result of the BCCC and there were changes coming from that

DR: just a comment: I've lived through 5 version of the regs, the Board can basically cover whatever it wants, no one checks what the statute actually says and no one challenges us, the BCCC isn't looking at the statute they're looking at conflicts between the codes. There is an opinion from the AG that is clear the Board doesn't have coverage over things like tennis courts

JD: I want to hear from counsel

JaD: I have reviewed this chapter and it does talk about recreational facilities, its not the best drafted statute but you wouldn't have something like accessible parking required for a place that doesn't have accessible features. The existing enforced statute is already regulating things that aren't buildings, like water facilities. Its my opinion that things like amusement rides can be regulated

JD: I would like to proceed with review of section 1000 so we can get through this, we can see what we find out later. We will move through this as if we did have coverage

CS: what I'm proposing is very simple, the language for 1002.2 I would prefer it to put it into the exception for protruding objects

Motion to Table 1002.2 and exceptions for accessible routes by PL
2nd by CS
By Acclamation/Carried

3. 10:44 AM 1002.4.5 Ride entry
WJ: we do have slight differences in ride entry and ride transfer
JD: reads AAB verbiage of ride entry. So we go into a little more detail
DR: I have a question of where it came from and the justification for it, it belongs in a different section
Discussion about differences in side entry and ride entry

Motion to add AAB red language for 1002.4.5 to ADA language by CS
2nd by PL
CS/N, MK/N, PL/N, EM/N, DR/N,

Motion to 1002.4.4.2 side entry, change ADA requirements to add 42 in dimension, for 1002.4.2.1 we're changing to 36x60 for length by DR
2nd by CS
By Acclamation/Carried

4. 11:00 AM 1002.5 amusement rides seat
DR: language in 1002.5 language should be moved to 1002.5.2

Motion to keep ADA language for accessible seat height, 14-24 inches by DR
2nd by PL

Discussion

MK: My only concern is: are transfer heights, the reason why toilets are 17-19 is its more easier for a lateral wheelchair transfer, not sure if something going down to 14 or up to 24 would be easier to transfer on to, an example being hotel beds

JD: the lower and higher ends make it harder to transfer?

MK: yes

CS: I do totally agree with what MK said, I think there is a reason for 17-19, interested to hear from DR, my gut is that 17-19 is easier

DR: I wasn't on the access board during the writing of the amusement ride standards, I do know the access board always hires consultants to do extensive research, so its research based and if they believe 14-24 is the standard height for rides based on research, then I think I would go with that. I can ask where 14-24 came from, but I know its based on research

JD: I hear both sides, transfer is going to be important, this is a brand new section so I don't know if this is an industry standard, so I would like to hear more about why this transfer height is different for amusement rides, we wouldn't see this height for other transfers, its specific to amusement ride. I'm assuming there's a good reason nationally for this I just want to see if this translates well for Massachusetts as well.

CS: Would DR be willing to table this until she does the research?

DR: withdraws motion

Motion to Table this and 1002.6 for DR to reach out to access board for more information on transfer height by DR

2nd by PL

By Acclamation/Carried

5. 11:21 AM 1005.2.1.1 Dispersion

WJ: no difference really but we elaborate more on this section

PL: I think its good to elaborate but does this add anything to the regs

WJ: this is just talking about the 'whys' so this makes more sense to put in the advisory booklet

Motion to strike AAB language and add it to advisory booklet by DR

2nd by PL

By Acclamation/Carried

6. 11:25 AM 1008 Playgrounds

WJ: the differences here are mostly about routes

DR: question about what "around the playground" means, one could mean a route along the perimeter of a fenced in playground, are we looking for a route around the playground or playground structure

WJ: the proposed regs is wants one around the playground, but we also start requiring surfacing for use zones, so its effectively both

DR: what is the playground, do we want the accessible route along the perimeter or play equipment

CS: can we propose language to make it clearer?

WJ: the reasoning behind the perimeter requirement is for parental supervision

DR: so we could require the route along the perimeter of the playground

WJ: describes current board interpretation, we don't currently enforce access to use zones

CS: it should be both, perimeter and play equipment

DR: I've seen people try to get around compliance by providing the route around the playground, that serves no purpose

JD: I think the perimeter should be close to the play area, if the perimeter is far away that is not serving anything

DR: we could say something like where the rubberized surfacing stops, an additional route should be there

CS: I think accessible route serving play areas is fine but also the perimeter

WJ: is the useful thing here defining playground as the area and all adjacent equipment

JD: would we put something here as an exception if you have the entire playground as an accessible surface then no perimeter route is required?

10 MINUTE BREAK

DR: I think my comment is that if we have an accessible route around the play structure, that is what we are looking for, access for both parent and child should be required. We aren't looking for the perimeter of the playground but the playground structures

EM: When people think of playgrounds they think of parents and children, its not just parents or children with disabilities, its all people and how can they access the playground, making it so that its functional for everyone

WJ: defines play area and play component

CS: it sounds like in light of the definition of play area, I think we want access to the components and around the perimeter of the playground, and to make it clear the accessible route for the perimeter is not far away

DR: I think that what we want to say is that an accessible route shall be provided around the play area

CS: that sounds good, we want to make sure people can get in

WJ: we're proposing the use zones of all play equipment's to be accessible as well

DR: should the accessible route requirement be in this section or in scoping, and to get to the accessible route. You would need an accessible route to the play area, and then around the play area. So you only need one accessible route into the play area and around it

WJ: all of those accessible route you're creating needs to connect back to the entrance, the parking, and the public way

PL: I think we need to be crystal clear here, its an important issue and spend time to get it right, if its in scoping too then so be it

Motion to have language say accessible route serving the play area, as well as to and around the perimeter of the play area by CS

2nd by PL

WJ: discussion about scoping vs technical provisions. I think 'where you must have routes' is a scoping provision, the route requirements is a technical provision. Some of this is scoping

WJ: discussion about requirements for playground routes and what routes are subject to exceptions, which could make them less or more stringent and we can't treat them like a normal sidewalk

By Acclamation/Carried

7. 12:08 PM 1008.2.3 Water play components

WJ: its basically saying where the route is submerged, we would be treating it like a pool requirement

CS: I was going to ask if water play components are defined, and is the exception allowed for a steeper slope

WJ: the exceptions are covering a couple things in walkways. We're saying stuff that's under water is treated differently from stuff above ground. Different hand rail requirements, etc. things above and below water need to be treated differently

PL: on the components, is that the right term, water play area vs water play components, do want to make it so nothing slips through the cracks

WJ: play component is the right term

Motion to adopt 1008.2.3 with suggested language addition by PL

2nd by CS

Discussion:

CS: is the exception 1 the same thing?

WJ: they're doing two different things that are related

By Acclamation/Carried

8. 12:15 PM 1008.2.6.1 and 1008.2.6.2

WJ: we have different rules than what the feds allow for what materials can be used for playground surfaces, which covers lots of things but also allows for things that the board does not allow like wood fiber. The feds allows engineered wood fiber.

JD: we need to consider what to put in 8.2.6.1 And 8.2.6.2

PL: I think we definitely want to use the criteria that is proposed in the AAB, totally agree about EWF not being accessible

WJ: Discussion about EWF playgrounds and Board's history with them

Motion to include proposed AAB language in 1008.2.6.1 and 2 by PL
2nd by CS

Discussion

MK: I totally agree with this, I do ADA site visits and see this all the time at playgrounds and its not accessible

CS: I'm just wondering now if we need including but not limited to language for the loose fill surfaces

WJ: that would make sense

DR: I think its going to be important when we talk about scoping talking about where it applies, would this apply to a small backyard daycare at someone's house

JD: We should probably have a discussion in scoping about this

By Acclamation/Carried

9. 12:30 PM 1008.3

WJ: this red language should be in advisory booklet

Motion to strike and add to advisory booklet by DR
2nd by PL

By Acclamation/Carried

10. 12:32 PM 1008.3.1.4 Transfer supports

WJ: this red text language is redundant, the examples piece should be in the advisory booklet

CS: have we consistently moved the examples to the advisory booklet

WJ: yes

DR: Designers use that booklet

Motion to strike and add language to advisory booklet by DR
2nd by MK

By Acclamation/Carried

12:37 PM Chair opens meeting up for public comment

12:55 PM

Motion to Adjourn by PL

2nd by DR

By Acclamation/Carried

Respectfully submitted,
Bradley Souders, Office Support Specialist