

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

UPPER ARLINGTON CITY SCHOOL
DISTRICT BOARD OF EDUCATION,

Appellant,

v.

CITY OF UPPER ARLINGTON
BUILDING DEPARTMENT,

Appellee.

Case No. 20CV004102

Judge Gina R. Russo

STIPULATIONS OF FACT

Appellant, Upper Arlington City School District Board of Education (the "School Board" or "Appellant"), and Appellee, City of Upper Arlington Building Department (the "City" or "Appellee"), by and through counsel, hereby stipulate to the following:

1. This matter arises from the design and future construction of the School Board's new Windermere Elementary School (the "School") on the School Board's real property located at 4101 Windermere Road, Upper Arlington, Ohio 43221.
2. The School Board procured Moody Nolan as architect of record for design of the School.
3. Among other things, Moody Nolan's design for the School, as approved by the School Board, calls for single-occupant toilet rooms with floor-to-ceiling walls and solid, full-frame, lockable doors, identified for use by either sex. The design further calls for a communal lavatory, which is typical in designs for elementary schools.
4. Table 2902.1 of the Ohio Building Code ("OBC") does not differentiate between

EXHIBIT A

male and female for the required number of plumbing fixtures in educational facilities, and the design at issue here meets the minimum number of required plumbing fixtures for an educational facility.

5. On April 13, 2020, Appellee issued its Nonconformance (Partial) Approval [1] adjudication order (“Adjudication Order”) (a copy of which is attached as Exhibit A-1).

6. Among other things, the Adjudication Order provided in Item No. 13 that “where plumbing fixtures are required, separate facilities shall be provided for each sex.”

7. The School Board appealed Item No. 13 of the Adjudication Order to the Ohio Board of Building Appeals (“BBA”) and the appeal was assigned Case Number 20-0051.

8. The BBA held a remote hearing on June 4, 2020.

9. Prior to the hearing and in response to a request from the BBA, both the School Board and the City provided position statements. Notably, the City’s position statement provided by Roger A. Eastep, the Chief Building Official for the City, stated the following, in part, regarding the proposed gender neutral single occupancy toilet room design:

[A]s the City of Upper Arlington Building Official I do not believe the [BBA’s] action in approving this request will impact the safety of the building or its occupants. If the [BBA] does not approve this request, the City would further request clarity on the other buildings with a similar plan. Please allow this letter to serve as notice that the Chief Building Official does not find approval of this request will result in safety hazard for this building or occupants.

10. At the BBA hearing, the School Board argued that the Adjudication Order is contrary to a fair interpretation or application of the Building Code and Plumbing Code (collectively the “Code”).

11. Alternatively, the School Board argued at the BBA hearing that if the Adjudication Order is deemed not to be contrary to the Code, then a variance from the Code should be granted, as the variance would not be contrary to the public interest and is warranted to avoid unnecessary

hardship.

12. At the conclusion of the hearing, the five-member BBA upheld Item No. 13 of the Adjudication Order by a vote of 3 to 2.

13. The BBA implicitly found that the gender-neutral bathrooms at issue do not comply with the Code because the toilet rooms are not separately labeled for each sex.

14. The BBA further denied the School Board's request for a variance to allow use by either sex in this specific instance.

15. Thereafter, the BBA issued its Final Order, dated June 10, 2020, in Case Number 20-0051 ("Final Order") (a copy of which is attached hereto as Exhibit A-2).

16. On June 18, 2020, the School Board submitted an unopposed Request for Reconsideration to the BBA (a copy of which is attached hereto as Exhibit A-3).

17. Unfortunately, because the BBA's next regularly scheduled meeting was after the appeal deadline to this Court, the BBA did not consider the Request for Reconsideration prior to the School Board's filing of the Notice of Administrative Appeal in this matter.

18. The International Code Council—the governing body for the International Building Code ("IBC")—has amended the IBC to expressly allow unisex single-user toilet rooms.

19. Moreover, the governing state agency, the Ohio Department of Commerce, has proposed these same modifications to the Code as well, although they have not yet made their way to codification. The modifications likely would have been codified by now if not for the COVID-19 pandemic.

20. Significantly, there was no testimony or evidence presented at the BBA hearing suggesting that utilization of single-occupant toilet rooms identified for use by either sex was against the public interest.

21. Rather, it appears that the BBA simply found it was contrary to the public interest to allow elementary school boys and girls to share a sink for purposes of grooming.

22. In response, the Superintendent of the Upper Arlington City School District, Dr. Paul Imhoff, testified that elementary schools almost always have communal sinks and washing stations as a matter of practice in order to properly supervise the children.

23. This point was further supported by Upper Arlington City Attorney, Jeanine Hummer, who testified that the City's analysis of the building code found nothing discussing a person's ability to groom themselves in private as relating to whether the building code's safety requirements had been met.

24. The City does not currently dispute and did not dispute at the BBA hearing that the School Board and the students would suffer an unnecessary hardship if a variance from the Code is not granted.

25. Moreover, the School Board presented testimony in favor of the variance from each of the witnesses, including testimony by the architect of record (Steve Dzuranin of Moody Nolan), the Superintendent of Schools (Dr. Paul Imhoff), the Chief Building Official for the City of Upper Arlington (Roger A. Eastep), and the Upper Arlington City Attorney (Jeanine Hummer).

26. Specifically, the architect of record, Steve Dzuranin, testified that the proposed bathroom configuration was selected for a number of reasons, with the primary reason being the ability of staff to monitor young children at the lavatories from the hallways to enhance safety of the students.

27. Superintendent Dr. Paul Imhoff testified in detail regarding the planning and design process for the proposed bathroom layout. That process included extensive discussions with teachers, staff, parents, and the community around the safety and well-being of the students. Dr.

Imhoff also testified that the community as well as the elected officials who represent them—the School Board—fully support the proposed bathroom layout.

28. Dr. Imhoff also testified to his experience as a 30-year educator, that he had taken part in building projects for two other school districts prior to this School project, and how the School Board felt that the proposed bathroom design would best serve the School Board's goals, which include:

- eliminating the inconvenience experienced by teachers in monitoring students when the separate-sex restroom facilities are not adjacent to each other;
- “potty parity” if the line for one sex is longer than the other;
- difficulty in assisting a disabled student of a different gender;
- increasing safety and privacy in order to minimize the opportunity for bullying and abuse in the restrooms; and
- avoiding the need to classify students based on gender in order to promote equality and to curtail reinforcement of negative stereotypes and other biases.

29. Dr. Imhoff also testified regarding how the Ohio Department of Commerce's proposed changes to the Code were taken under consideration during the planning process and as a way to essentially future proof the bathroom design.

30. The City's Chief Building Official, Roger A. Eastep, testified that, as a construction industry veteran with over 40 years of experience who had reviewed over a billion dollars in construction including many schools, he felt there were no safety issues with the design of the building. He further testified that he felt it was appropriate to defer to the expertise of Dr. Imhoff with respect to providing a safe learning environment for students including the proposed bathroom layout.

31. In light of the foregoing, the School District believes and testified at the BBA

hearing that the School's District requested variance to permit the School District to utilize single-occupant toilet rooms identified for use by either sex is not against public interest and that enforcement of the Code provisions at issue will result in an unnecessary hardship. The City believes and testified that the School's District requested variance is not a public safety issue under the Code.

Respectfully submitted,

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