

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF ADMINISTRATION
BUILDING CODE DIVISION

In the Matter of Dignified Assisted Living,
Inc.'s Appeal of the Decision of the City of
Rogers Building Code Board of Appeals
Regarding Alternate (Locked) Congregate
Residence.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDED ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 9:30 a.m. on Tuesday, July 11, 2000 at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, in the City of Minneapolis, Minnesota. The record closed on July 12, 2000 upon receipt of a late filed exhibit.

The City of Rogers was represented by Robert J. Miller, Esq. of the Miller Law Firm, P.A., 9405 36th Avenue North, New Hope, Minnesota 55427. Dignified Living, Inc. was represented by its president, Thomas A. Wiskow, 20600 South Diamond Lake Road, Rogers, Minnesota 55374.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Administration will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact David Fisher, Commissioner, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Does the Minnesota State Building Code and related rules permit a residential building to be classified as an "alternate (locked) congregate residence" so as to permit the exit doors to be locked in such a manner that it prevents residents from opening the doors from the inside except in emergency conditions?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Appellant, Dignified Assisted Living, constructed a facility to house Alzheimer and dementia residents only, at 20600 South Diamond Lake Road in the city of Rogers, Minnesota. The occupancy of the facility is classified as R-1.

2. While the facility was being constructed in March of 1999 the appellant asked the Rogers building inspector to consider approval for the locking of doors in the facility pursuant to a policy adopted and approved by the building code division of the Department of Administration.

3. That policy, which the State has applied since 1995, permits a locked door in R-1 Alzheimers facilities provided that the facility also adopts certain requirements which are more restrictive than the usual R-1 requirements, such as smoke compartments, combustibile construction requirements, more restrictive sprinkler system requirements and more restrictive attic requirements.

4. The applicable building code provision for R-1 congregate residences serving as group care facilities provides that an egress controlled device is permissible only if it can be deactivated by the application of manual force of not more than 15 pounds applied for two seconds.^[1]

5. About 12 years ago nursing homes began adding dementia units. Because dementia residents wander, a problem arose as to how to lock the facilities and still protect the residents in case of fire. At the time the building code only permitted locking in prisons or I-3 occupancies.

6. In 1994 four dementia facilities were proposed to be constructed in Minnesota and were being reviewed differently by the local building officials. So the state building code division developed a policy in 1995 which allows locking of the facilities provided that certain restrictions are observed.

7. In a letter dated March 15, 2000 Mr. Wiskow specifically requested approval to lock four exterior wing exit doors which would open only via smoke and fire alarms or by appropriate use of a keypad at each exit door.

8. By a letter dated April 13, 2000 the building inspector, Lauren Kohnen, advised Mr. Wiskow that the locking of exterior doors would not be permitted in an R-1 facility.^[2]

9. In a letter dated April 18, 2000 Mr. Wiskow requested a hearing on his request before the City of Rogers Board of Appeals and a hearing was set for May 24, 2000.^[3]

10. The building inspector sent a memo dated May 15, 2000 to the members of the Board of Appeals which stated that he believed there were other options than locked doors, such as a small exterior fenced area outside each of the three exits, a change of occupancy to I or institutional, increased staffing levels and additional screening of residents with potential problems.^[4]

11. The Board of Appeals met on May 24, 2000 and heard from Mr. Kohnen and Mr. Wiskow and others. By a vote of 3 to 2 the Board of Appeals voted to deny the appeal because it could not accept state proposed “guidelines” that would allow locking doors as a code equivalency.^[5]

12. The policy developed by the building code division in 1995 to address locked doors in residential assisted living facilities was supposed to be adopted in rule in 1998 but was inadvertently not included and will likely be proposed as a rule in 2001.

13. The appellant’s facility meets the provisions of the building code division’s alternate locked congregate residence policy.

14. The State building code does permit the use of alternate design or methods of construction under certain circumstances. It provides at 104.2.8 that:

The provisions of this code are not intended to prevent the use of any material, alternate design or method of construction not specifically prescribed by this code, provided any alternate has been approved and its use authorized by the building official.

The building official may approve any such alternate, provided the building official finds that the proposed design is satisfactory and complies with the provisions of this code and that the material method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.^[6]

15. The request advanced by the appellant provides equivalent life safety for the residents of the facility within the meaning of Section 104.2.8 of the Uniform Building Code.

16. Other facilities similar to those of appellant in the State of Minnesota have received approval for the application of the BCD policy to their dementia units because the local building inspectors have accepted the BCD policy as the equivalent of R-1 building code provisions.

17. A resident at the Appellant’s Rogers Alzheimer’s facility was able to exit from the building and break a lock on the gate and leave the facility.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Administration have jurisdiction in this matter pursuant to Minn. Stat. § § 16B.67 and 14.50.

2. The Department of Administration has complied with all relevant substantive and procedural requirements of law or rule.

3. The Department has given proper notice of the hearing in this matter.

4. That the building code division's 1995 policy allowing the locking of doors in non-emergency situations in alternate (locked) congregate residences provides equivalent life safety to residents and is therefore, an acceptable alternate method of design and construction within the meaning of the Uniform Building Code at Section 104.2.8.

5. The Department of Administration Building Code Division should proceed to adopt this policy in rule.

6. These conclusions are arrived at for the reasons set out in the memorandum that follows and which is incorporated into these conclusions by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDED ORDER

IT IS HEREBY RESPECTFULLY RECOMMENDED: That the Commissioner of Administration grant the appeal and issue an Order permitting operation of the exit doors in the facility in accord with the 1995 Building Code Division policy.

Dated this 19th day of July 2000.

s/ George A. Beck

GEORGE A. BECK
Administrative Law Judge

Reported: Tape recorded. No Transcript
Prepared.

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The conclusion that the appellant's request to implement the building code division policy on locked doors in congregate residences is consistent with the Uniform Building Code is based upon the testimony of Stephen Hernick, an assistant director of the Building Codes and Standards Division. Mr. Hernick testified to the history of this problem in the State of Minnesota as well as the Building Codes Division response as set out in the Findings of Fact. The Appellant's request is consistent with the Building Code Division Policy. It is likely that this policy will be adopted in rule and the next cycle of rulemaking by the Building Code Division. Mr. Hernick's testimony made clear the need for a locking mechanism for Alzheimer's and dementia patients short of an institutional occupancy. The BCD policy contains requirements that are more restrictive than those in the usual R-1 occupancy in order to protect the safety of residents. As Mr. Hernick points out in the event of an emergency, the doors will not be locked.

The record reflects that a number of similar assisted living facilities in Minnesota have received the approval of local building code inspectors for requests like that made by the appellant. The record also reflects that the appellant tried the fence proposal advanced by the building inspector and found that it was not effective. Matters such as staffing and screening of residents appear to be outside of the authority of the building inspector. The only reason advanced by the Board of Appeals for its three to two decision was that it was not prepared to accept the state's proposed "guidelines" since they were not included in the building code. This record adequately demonstrates that the appellant's request to implement the BCD policy in this particular situation is the equivalent of the safety requirements of the building code.

G.A.B.

^[1] City Ex. 3.

^[2] Ex. 4.

^[3] Ex. 1.

^[4] Ex. 1.

^[5] Ex. 1.

^[6] Ex. 2, attachment 2.