

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

November 26, 2018

VIA INTER-OFFICE MAIL AND EMAIL

Max Slater, Esq.
Administrative Hearing Officer
Allegheny Co. Health Dept.
542 Fourth Avenue
Pittsburgh, PA 15219

RE: Allegheny County Health Department's Position Statement in the Appeal Hearing for Ali Jahromi, 500 Cato St., Apt. A, Pittsburgh, PA 15213 (SR#: HCE-20170316-2150), Docket No: ACHD-18-017.

Dear Hearing Officer Slater:

Pursuant to Allegheny County Health Department ("ACHD") Rules and Regulations Article XI, Hearings and Appeals, ("Article XI") § 1105, a full evidentiary hearing was held on September 19, 2018 to adjudicate the appeal filed by Ali Jahromi ("Hearing"). Mr. Jahromi appealed the denial of his variance request and claimed that the denial was an abuse of discretion, unconstitutional, a government taking, and that he did not cause the defects found at 500 Cato St., Apt. A, Pittsburgh, PA 15213 ("Basement Unit").

As stated by Article XI § 1105.C.7, the Appellant bears the burden of proof when the ACHD denies a license, permit, approval, or certification. To prevail in his appeal, Mr. Jahromi must prove by a preponderance of the evidence that the ACHD is required to grant his variance request. Mr. Jahromi is the owner of the Basement Unit.¹

According to ACHD Rules and Regulations Article VI, Housing and Community Environment, ("Article VI") § 601, one of the purposes of Article VI is to "[e]stablish minimum standards governing the condition and maintenance of dwellings and premises affecting or likely to affect residents of Allegheny County" to ensure that the "dwellings [are] safe, sanitary and fit for human habitation." Mr. Jahromi requested a variance of Article VI § 643.A. This section states that basement units may not be occupied as dwelling units or habitable rooms unless the floors and walls are impervious to water, the ceiling height is at least 7 feet, and any room intended to be used for sleeping purposes must have one window that meets the requirements outlined in this section or a door leading directly to the outside and exiting at grade level. Moreover, the basement dwelling unit or habitable room must comply with the ventilation and

¹ Verbatim Record of September 19, 2018 Hearing (hereinafter "Tr.") at p. 5.



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window area requirements of Article VI §§ 647 and 648 which, among other requirements, includes that every habitable room must have at least one openable window or a device that adequately ventilates the room. Article VI § 604 defines “habitable room” as “[a] room or enclosed floor space occupied or intended to be occupied for living, sleeping, cooking or eating purposes, excluding bathrooms, toilet rooms, laundries, pantries, foyers, public halls, communicating corridors, closets and storage spaces.” According to this definition, the bedroom, living room, and kitchen of the Basement Unit are habitable rooms.

On May 23, 2018, the ACHD denied the variance request due to noncompliant ceiling heights in the living room, bedroom, and kitchen and inadequate ventilation in the kitchen, and the public health and safety concerns these nonconformities pose.² Patrick Stokes, the ACHD’s Environmental Health Specialist II, testified that he measured the ceiling heights and found them to be 6½ ft. in all the rooms of the Basement Unit³ except the kitchen which had a ceiling height of 6.45 ft.⁴ Furthermore, he observed two beams in the living room and one beam in the bedroom.⁵ The beams in the living room were 5 ft. 9 in. above the floor and the beam in the bedroom was 5 ft. 10½ in. above the floor.⁶ Moreover, the beams are about 8-10 in. wide.⁷ There are no windows in the living room or the bedroom.⁸ The ventilation deficiency in the kitchen was not meaningfully raised by Mr. Jahromi during the Hearing.

Article VI § 659 states that “[a]ny interested party may request a variance from the provisions of” Article VI and that their request must “be in writing, state the reasons for the request, and provide evidence that the variance poses no real or potential hazard to the health, safety, or welfare of the public or any individual.” Article VI § 659 does not command the ACHD to grant the variance even if all its requirements are met. Mr. Jahromi did not offer any evidence that the variance he seeks poses no real or potential hazard to the health, safety, or welfare of the public or any individual. Instead, he argued that he was provided a Certificate of Occupancy by the City of Pittsburgh and that he was unaware of the ACHD’s regulations.⁹ On the other hand, David Namey, Program Manager of the ACHD’s Housing and Community Environment Program, testified about several health and safety concerns the ACHD evaluated.¹⁰

² Exhibit D3 & Tr. at p. 21.

³ Tr. at pp. 13-15 & Exhibit D3.

⁴ Exhibit D3.

⁵ Tr. at p. 15.

⁶ Tr. at p. 16 & Exhibit D3.

⁷ Tr. at p. 17.

⁸ Tr. at p. 17.

⁹ Tr. at pp. 6, 11.

¹⁰ Tr. at p. 19.

Concerns included how low ceilings and low beams can cause abrasions because occupants and/or their visitors can hit their heads off of the beams.^{11 12} Moreover, reduced ventilation and air flow can cause an accumulation of carbon dioxide which can lead to reduced appetite and vitality.¹³ Reduced ventilation also inhibits the ventilation of odors.¹⁴

The ACHD requirements are in accordance with the law. The 2015 International Property Maintenance Code (“IPMC”) § 404.3 enforces stricter standards than the ACHD.¹⁵ The IPMC states that habitable basement areas must have a minimum *clear* ceiling height of 7 ft. and beams may not be lower than 6 ft. 6 in. above the floor. According to the IPMC commentary, “[s]ufficient ceiling heights are necessary to provide an adequate volume of air for occupants in closed spaces and to provide for their psychological well-being.” The only exception to the 7 ft. ceiling height requirement in basement units is for rooms exclusively used for laundry, recreation, or study because it is anticipated that these rooms will only be used occasionally. These rooms must have minimum height of 6 ft. 8 in. and minimum *clear* height of 6 ft. 4 in. Moreover, the 2015 International Residential Code (“IRC”) § R305.1 also requires habitable spaces in basement units to have a ceiling height of at least 7 ft. and beams in habitable spaces of basements may not be lower than 6 ft. 4 in. above the floor.¹⁶ Only bathrooms, toilet rooms, and laundry rooms are permitted to have a minimum ceiling height of 6 ft. 8 in. The IRC requires these minimum ceiling heights “to help maintain a healthy interior environment.” The living room, bedroom, and kitchen of the Basement Unit do not meet the ceiling height requirements outlined in the IPMC or the IRC with or without beams and therefore, would not be permitted for occupancy.

Mr. Jahromi, having the burden of proof, failed to demonstrate why he is entitled to the variance of provisions that are intended to promote health and safety of the public. Instead, the ACHD presented evidence that the regulatory requirements and their purpose are in accordance with the law and in pursuit of ensuring that dwellings are safe, sanitary, and fit for human habitation. Thus, the variance request was properly denied, and the Basement Unit is not permitted for occupancy. The ACHD asserts that the appeal should be dismissed.

¹¹ Tr. at p. 21.

¹² Mr. Jahromi claims that he never received a complaint regarding the ceiling height in the Basement Unit. Tr. a pp. 23-24. However, this is untrue because on March 16, 2017, the ACHD notified Mr. Jahromi that it received a complaint regarding nonconforming ceiling height in the Basement Unit. See Exhibit D4 attached to this position statement. The ACHD moves to admit Exhibit D4 into the record.

¹³ Tr. at p. 21.

¹⁴ Id.

¹⁵ Attached to this position statement as Exhibit D5.

¹⁶ Attached to this position statement as Exhibit D6.

To: Max Slater, Esq.
Docket No: ACHD-18-017
Date: November 26, 2018
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Sincerely,

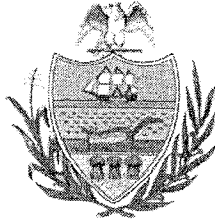
A handwritten signature in black ink, appearing to read "Vijyalakshmi Patel". The signature is written in a cursive, somewhat stylized font.

Vijyalakshmi Patel
ACHD Assistant Solicitor

Enclosures

cc: Michael A. Parker, ACHD Solicitor (via email)
David Namey, ACHD Housing Program Manager (via email)
Ali Jahromi, Appellant (via email)

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

Mr. Ali Mohammed Jahromi
105 Atterbury Street
Monroeville, PA 15146

March 16, 2017

RE : Service Request # **HCE-20170316-2150**

Property Address : 500 CATO STREET APT. A
Pittsburgh, PA 15213
Census Tract : 30409

Dear Mr. Jahromi:

Please be advised that the Allegheny County Health Department has received a complaint regarding the following alleged deficiency(s) at the property listed above.

1. MICE IN UNIT
2. CEILING HEIGHT REQUIREMENTS DO NOT MEET REGULATIONS

If the above conditions exist, this office is requesting your cooperation in correcting the conditions by 04/20/2017. Please be advised that if you do not comply with this request in the time specified, the Health Department may perform an on-site inspection of this property. If the above conditions do not exist you may disregard this notice.

If you have any questions, contact this office at (412)350-4046.

Sincerely,

Patrick Stokes
Environmental Health Specialist I

PS:Sb

CC: Complainant



KAREN HACKER, MD, MPH, DIRECTOR
ALLEGHENY COUNTY HEALTH DEPARTMENT
HOUSING & COMMUNITY ENVIRONMENT PROGRAM
3190 SASSAFRAS WAY (NEAR 32ND ST. AT LIBERTY AVE.)
PITTSBURGH, PA 15201-1443

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LIGHT, VENTILATION AND OCCUPANCY LIMITATIONS

404.3 Minimum ceiling heights. *Habitable spaces*, hallways, corridors, laundry areas, *bathrooms*, *toilet rooms* and habitable *basement* areas shall have a minimum clear ceiling height of 7 feet (2134 mm).

Exceptions:

1. In one- and two-family dwellings, beams or girders spaced not less than 4 feet (1219 mm) on center and projecting a maximum of 6 inches (152 mm) below the required ceiling height.
2. *Basement* rooms in one- and two-family dwellings occupied exclusively for laundry, study or recreation purposes, having a minimum ceiling height of 6 feet 8 inches (2033 mm) with a minimum clear height of 6 feet 4 inches (1932 mm) under beams, girders, ducts and similar obstructions.
3. Rooms occupied exclusively for sleeping, study or similar purposes and having a sloped ceiling over all or part of the room, with a minimum clear ceiling height of 7 feet (2134 mm) over not less than one-third of the required minimum floor area. In calculating the floor area of such rooms, only those portions of the floor area with a minimum clear ceiling height of 5 feet (1524 mm) shall be included.

❖ Sufficient ceiling heights are necessary to provide an adequate volume of air for occupants in closed spaces and to provide for their psychological well-being. The height requirements are established by this section.

To accommodate various conditions, the code establishes exceptions that permit a reduction in ceiling height within limited conditions. These exceptions include the following:

Exception 1 makes provisions for beams and girders to extend into the required minimum height. This is consistent with the IBC and the *International Residential Code*® (IRC®) requirements, which allow this type of projection to accommodate structural members.

Exception 2 is included to permit the use of existing basements with low headroom. It is anticipated that these rooms will be used only occasionally and will not adversely affect the occupants' health or safety.

Exception 3 is included to accommodate the many 1½-story houses that have the sloped attic area finished into bedrooms and similar uses.

Similar to the previous exception, the 7-foot-high (2134 mm) ceiling must extend over one-third of the required area established in Section 404.4.1. Thus, if a room is larger than the minimum required size for its use, the 7-foot-high (2134 mm) portion may be less than one-third of the room's actual floor area.

Example: A bedroom of 175 square feet (16.3 m²) would be required to have a 7-foot-high (2134 mm) ceiling over no less than 23.3 square feet (2.2 m²) of the room area. The minimum required area of a bedroom is 70 square feet (6.5 m²) (see Section 404.4.1); one-third of the required 70 square feet (6.5 m²) is 23.3 square feet (2.2 m²).

404.4 Bedroom and living room requirements. Every *bedroom* and living room shall comply with the requirements of Sections 404.4.1 through 404.4.5.

❖ The size of bedrooms and living rooms in a dwelling unit are determining factors in the comfort and safety of occupants. As such, the code establishes minimum sizes and restricts certain configurations in regard to bathrooms, means of egress and other habitable rooms.

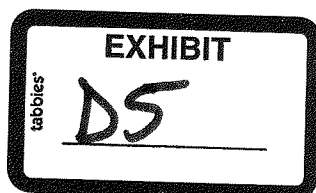
404.4.1 Room area. Every living room shall contain not less than 120 square feet (11.2 m²) and every bedroom shall contain not less than 70 square feet (6.5 m²) and every bedroom occupied by more than one person shall contain not less than 50 square feet (4.6 m²) of floor area for each occupant thereof.

❖ The smallest living room allowed is 120 square feet (11.1 m²). Utilizing the minimum room width of 7 feet (2134 mm) would result in a living room size of approximately 7 feet by 17 feet (2134 mm by 5182 mm). A more functional room size would perhaps be 10 feet by 12 feet (3048 mm by 3658 mm). The smallest bedroom allowed is 70 square feet (6.5 m²). This is barely enough space for a regular-sized (twin) bed and dresser. If a bedroom is intended to accommodate more than one person, the room must have at least 50 square feet (4.6 m²) per person. A sleeping room for two people must contain at least 100 square feet (9.3 m²), for three, 150 square feet (13.9 m²) and so on. Inadequate sleeping space may increase the spread of communicable diseases, reduce privacy and provide insufficient space for clothes, furniture and other personal belongings. See the commentary to Section 404.5 for examples of the application of the requirements of this section.

404.4.2 Access from bedrooms. *Bedrooms* shall not constitute the only means of access to other *bedrooms* or *habitable spaces* and shall not serve as the only means of egress from other *habitable spaces*.

Exception: Units that contain fewer than two *bedrooms*.

❖ Every occupant must be provided with privacy in his or her sleeping room. The need for privacy may lead occupants to lock or barricade doors in certain situations; therefore, if the only access to other habitable spaces or the means of egress is through a bedroom, there is a possibility that the only way out of a dwelling unit may be blocked in an emergency situation. Even without an emergency, occupants may be seriously inconvenienced in their movement about the dwelling unit. Bedrooms, therefore, must be arranged so that other occupants and guests do not have to pass through one bedroom to get to another bedroom or other habitable spaces (see Commentary Figure 404.4.2). Additionally, dwelling units must be configured such that occupants can egress from any habitable room in the dwelling unit without passing through a bedroom. The exception would permit a dwelling unit with only one bedroom to have an arrangement where the only access to habitable rooms or the means of



R304.2 Minimum dimensions. Habitable rooms shall be not less than 7 feet (2134 mm) in any horizontal dimension.

Exception: Kitchens.

- ❖ Except for kitchens, all habitable rooms must have a minimum horizontal dimension in any direction of at least 7 feet (2134 mm) (see Commentary Figure R304.1).

R304.3 Height effect on room area. Portions of a room with a sloping ceiling measuring less than 5 feet (1524 mm) or a furred ceiling measuring less than 7 feet (2134 mm) from the finished floor to the finished ceiling shall not be considered as contributing to the minimum required habitable area for that room.

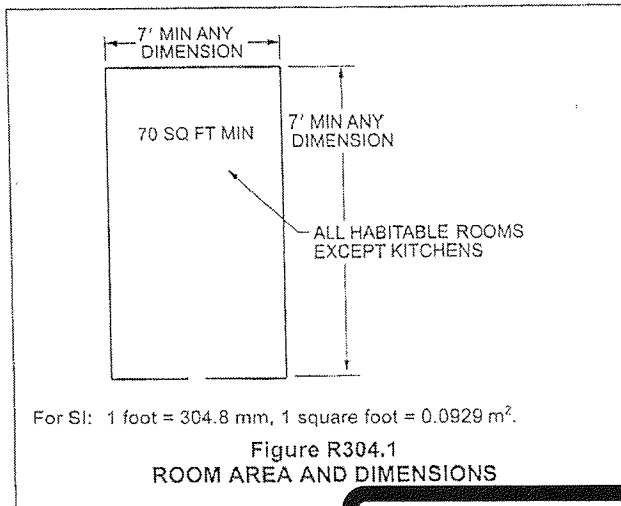
- ❖ In a room with a sloping ceiling, any portion of the room with a vertical ceiling height of less than 5 feet (1524 mm), as measured from the finished floor, must not be included in the calculation of the minimum required floor area for habitation. Likewise, the area under a furred ceiling with a vertical height less than 7 feet (2134 mm) from the finished floor is not part of the habitable area. An example of the first case would be an A-frame structure, which consists of a sloping roof and no or minimal exterior walls. This condition could also exist in any room that has a sloping ceiling. The low height makes those portions of the room generally unusable for adults (see Commentary Figure R304.3 and commentary to Section 305.1).

**SECTION R305
CEILING HEIGHT**

R305.1 Minimum height. *Habitable space*, hallways and portions of *basements* containing these spaces shall have a ceiling height of not less than 7 feet (2134 mm). Bathrooms, toilet rooms and laundry rooms shall have a ceiling height of not less than 6 feet 8 inches (2032 mm).

Exceptions:

1. For rooms with sloped ceilings, the required floor area of the room shall have a ceiling height of not

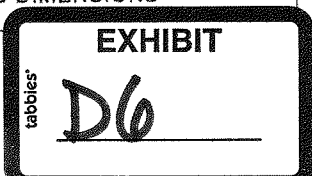
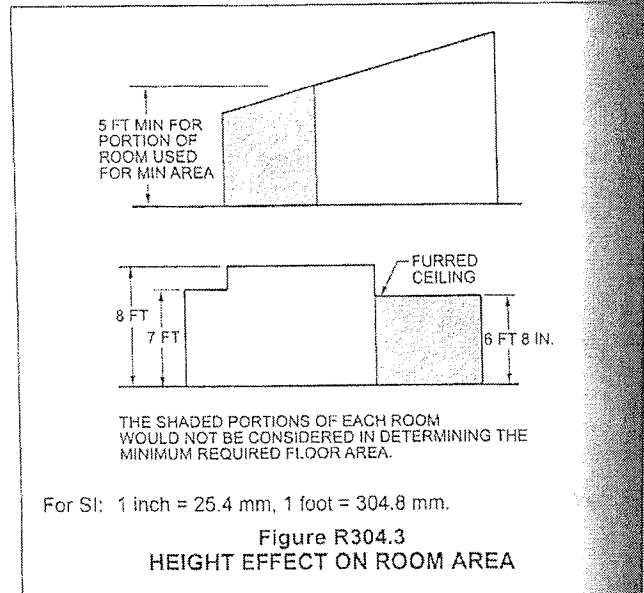


less than 5 feet (1524 mm) and not less than 50 percent of the required floor area shall have a ceiling height of not less than 7 feet (2134 mm).

2. The ceiling height above bathroom and toilet room fixtures shall be such that the fixture is capable of being used for its intended purpose. A shower or tub equipped with a showerhead shall have a ceiling height of not less than 6 feet 8 inches (2032 mm) above an area of not less than 30 inches (762 mm) by 30 inches (762 mm) at the showerhead.
 3. Beams, girders, ducts or other obstructions in *basements* containing *habitable space* shall be permitted to project to within 6 feet 4 inches (1931 mm) of the finished floor.
- ❖ Minimum ceiling heights are required for habitable spaces (see the definition in Chapter 2), including kitchens, hallways, bathrooms, toilet rooms and laundry rooms, as well as those portions of basements that contain habitable space.

For habitable spaces and hallways, as well as portions of basements that contain such spaces, the minimum required ceiling height is 7 feet (2134 mm). This is intended to help maintain a healthy interior environment. The minimum required ceiling height for bathrooms, toilet rooms and laundry rooms is 6 feet 8 inches (2032 mm).

Exception 1 is applicable to habitable spaces that have sloped ceilings. It requires that not less than one half of the required room area (or 70 feet in accordance with Section R304.1, divided by 2, for a result of 35 square feet of room area) must have a ceiling height of not less than 7 feet, and the remaining portion of the required room area (70 square feet minus the area of the room with a ceiling height of not less than 7 feet) must have a ceiling height of not less than 5 feet. Sloped ceiling heights in the remainder of such rooms are not regulated. Note that, similar to Exception



Section R304.3 requires that portions of a room with ceilings less than 5 feet in height, as well as ceilings with a height of less than 7 feet (2134 mm) as measured from finished floor to finished ceiling are not allowed to be considered as part of the minimum required area of habitable rooms. Section R304.3 also requires that ceiling heights be measured from the top of finished floors to the underside of finished ceilings.

Exception 2 requires that showers and tubs equipped with a shower head have a ceiling height at the shower head of not less than 6 feet 8 inches for an area of not less than 30 inches (763 mm) by 30 inches (763 mm) at the shower head, but allows other areas for showers and tubs to have lesser ceiling heights, as long as the fixture is capable of being used for its intended purpose. Similarly, the required minimum ceiling height over other bathroom and toilet room fixtures is allowed to be less than 6 feet 8 inches (2032 mm), as long as the fixtures are capable of being used for their intended purpose. This exception would allow sloping ceiling over toilet, bath or shower fixtures if a minimum ceiling height of 6 feet, 8 inches (2036 mm) is maintained over the front clearance area (see Section R307.1). If the fixture can still be used effectively, the ceiling height can be lower over the fixture itself. For example, the ceiling height over the tank and bowl of the toilet can be below 6 feet, 8 inches (2033 mm), provided that the clearance was high enough to allow someone to sit on the toilet.

Exception 3 allows a ceiling height of 6 feet 4 inches (1951 mm), as measured from the top of the finished floor, under beams, girders, ducts and other obstructions in those portions of basements that contain habitable spaces (see commentary for Section R305.1.1).

1.1 Basements. Portions of *basements* that do not contain habitable space or hallways shall have a ceiling height of not less than 6 feet 8 inches (2032 mm).

Exception: At beams, girders, ducts or other obstructions, the ceiling height shall be not less than 6 feet 4 inches (1951 mm) from the finished floor.

Portions of basements that are not addressed in Section R305.1 need to have a ceiling height of only 6 feet, 4 inches (1933 mm) or more, with at least 6 feet, 4 inches (1932 mm) of clear height under beams, girders, ducts and similar obstructions (see commentary for Section R305.1).

SECTION R306 SANITATION

1.1 Toilet facilities. Every *dwelling* unit shall be provided with a water closet, lavatory, and a bathtub or shower.

- ❖ Dwelling units must have at least one of each of the fixtures indicated in the code, and the fixtures must be connected to an approved sanitary sewer or private sewage disposal system. A water closet, lavatory and either a bathtub or shower are the minimum fixtures needed to maintain the occupant's health and cleanliness. For additional information on plumbing requirements, see Chapters 25 through 33.

R306.2 Kitchen. Each *dwelling* unit shall be provided with a kitchen area and every kitchen area shall be provided with a sink.

- ❖ Dwelling units must have a kitchen area with a sink for the basic preparation of food.

R306.3 Sewage disposal. Plumbing fixtures shall be connected to a sanitary sewer or to an *approved* private sewage disposal system.

- ❖ To maintain sanitary conditions in the dwelling, plumbing fixtures must be attached to either a sanitary sewer or approved private sewage disposal system.

R306.4 Water supply to fixtures. Plumbing fixtures shall be connected to an *approved* water supply. Kitchen sinks, lavatories, bathtubs, showers, bidets, laundry tubs and washing machine outlets shall be provided with hot and cold water.

- ❖ To provide proper sanitation for occupants of dwelling units, each plumbing fixture must be connected to an approved water supply. Additionally, specific fixtures must have both a hot and cold water supply.

SECTION R307 TOILET, BATH AND SHOWER SPACES

R307.1 Space required. Fixtures shall be spaced in accordance with Figure R307.1, and in accordance with the requirements of Section P2705.1.

- ❖ Fixtures require certain clearances to be accessible and usable. Figure R307.1 shows the minimum fixture clearances. The diagram is consistent with the requirements in Section P2705.1, Item 5. In addition, Item 5 also specifies that adjacent fixtures must be at least 30 inches (762 mm) center-to-center. A common fixture configuration in a bathroom that could be affected by this would be two adjacent lavatories in one vanity or a lavatory adjacent to a water closet.

R307.2 Bathtub and shower spaces. Bathtub and shower floors and walls above bathtubs with installed shower heads and in shower compartments shall be finished with a nonabsorbent surface. Such wall surfaces shall extend to a height of not less than 6 feet (1829 mm) above the floor.

- ❖ Wall surfaces subject to water spray by showerheads must be protected with a nonabsorbent surface to a height of at least 6 feet (1829 mm) above the floor of a bathtub or shower.