

ANN ARBOR BUILDING/CONSTRUCTION BOARD OF APPEALS

Appeal to Board: Hearing BBA19-001

1625 Waltham Drive

(Parcel Identification Number: 09-09-31-306-036)

Appeal Date: February 21, 2019

STAFF REPORT

Applicant: Rooter MD Plbg LLC (Peter Wood), 31675 W Eight Mile,
Livonia, MI 48152

Representative: Oscar A. Rodriguez, Esq.

Property: 1625 Waltham Drive, Ann Arbor, Michigan 48103

Mailing address: Hooper Hathaway PC
c/o Oscar A. Rodriguez
126 South Main Street
Ann Arbor, Michigan 48104

APPLICATION

Desired Relief:

“Variance from the residential code to allow approval of permit.” (Application, page 1).
“A holding that Mr. Wood is not required to comply with P3005.3 in the case of PLUM14-1848 ONLY.” (Attachment to Application, page 7, paragraph 20.a.).

Basis of Appeal:

The literal application of the substantive requirement (P3005.3) will result in an exceptional, practical difficulty to Mr. Wood because digging up 25 feet of sewer line is extremely, expensive. (Attachment to Application, page 3, paragraph 8), and:

- a. The CIPP installation is "adequate for its intended use" and does not "substantially deviate from performance required by the code of that particular item or part for the health, safety and welfare of the people of this state." The owner has been using the repaired sewer line for 4 years without issue. She is satisfied with the performance and has no complaints. There is no evidence that there is a performance problem with the sewer, much less a substantial performance issue. The product has a State of Michigan Certificate of Acceptability and comes with a 10 year warranty. (Attachment to Application, pp 3-4, paragraph 11, Exhibits 2, 3); and,

- b. "Mr. Wood is not pursuing this variance to affect a general change to the code. While it is expected that he will seek variances in the other cases, he certainly does not expect to require a variance in every case in which he installs a CIPP liner." (Attachment to Application, p 4, paragraphs 12-13).

HISTORY IN BUILDING BOARD OF APPEALS RE: 1625 WALTHAM

Mr. Wood performed work at 1625 Waltham to install cured-in-place-pipe ("CIPP"). On November 15, 2018, the Building Board of Appeals upheld the Building Official's decision that the work did not pass final inspection because it did not comply with MRC P3005.3 (2009). The BBA stated:

- (1) The true intent of the 2009 Michigan Residential Code and P3005.3 governing the construction at 1625 Waltham have been correctly interpreted by the Building Official;
- (2) The provisions of 2009 Michigan Residential Code P3005.3 apply to the construction at 1625 Waltham;

The BBA's decision is final because Mr. Wood did not appeal within 10 business days to the State Construction Code Commission (by December 3, 2018). (Order attached to Staff Report).

STANDARD FOR VARIANCES

MCL 125.1515 (PA 230, Section 15) provides:
Specific variance from code: breach of condition; permissible variance.
Sec. 15.

- (1) After a public hearing a board of appeals may grant a specific variance to a substantive requirement of the code if the literal application of the substantive requirement would result in an exceptional, practical difficulty to the applicant, and if both of the following requirements are satisfied:
 - a. The performance of the particular item or part of the building or structure with respect to which the variance is granted shall be adequate for its intended use and shall not substantially deviate from performance required by the code of that particular item or part for the health, safety and welfare of the people of this state
 - b. The specific condition justifying the variance shall be neither so general nor recurrent in nature as to make an amendment of the code with respect to the condition reasonably practical or desirable.
- (2) A board of appeals may attach in writing any condition in connection with the granting of a variance that in its judgement is necessary to protect the health, safety and welfare of the people of this state. The breach of a condition shall automatically invalidate the variance and any permit, license and certificate granted on the basis of it. In no case shall more than a minimum variance from the code be granted than is necessary to alleviate the exceptional, practical difficulty.

BUILDING OFFICIAL'S RECOMMENDATIONS

The Building Official recommends that the BBA deny a variance because the cost to correct a violation of the code is not an “exceptional, practical difficulty.” Mr. Wood fails to meet this prerequisite for a variance. The BBA has determined that the CIPP installation by Mr. Wood failed to comply with MRC P3005.3. The cost to correct a violation of the code is not an “exceptional, practicable difficulty” as construction costs are often an issue for contractors and homeowners.

Because Mr. Wood fails the prerequisite of “exceptional, practical difficulty” it is not necessary to consider the other requirements for a variance, however, Mr. Wood also fails to meet both:

- (a) The failure to meet the requirements of MRC P3005.3 as determined by the BBA and the Building Official establishes that the performance of the CIPP installation at 1625 Waltham is not adequate for its intended use and substantially deviates from the performance required by the code for the public health, safety and welfare of the people. MRC R101.3 states that the intent of the code, which MRC P3005.3 is part of, is to establish minimum requirements to safeguard the public safety, health, and general welfare. The intent of MRC P3005.3 is to protect the health, safety, and welfare of **all members of the public** and not only the current homeowner.
- (b) Mr. Wood does not state a **specific condition** that justifies a variance. Granting the variance would be an amendment of the code, which the BBA may not make. Failure to comply with the code and the costs associated with the necessary work to allow a permit to be finalized is not a **condition** that justifies a variance because this is an occurrence that is “general and recurrent in nature” and makes granting a variance not “reasonably practical or desirable.”

ADDENDUM

The failure to satisfy the requirements for a variance in Act 230, Section 15, and the BBA's previous order make Mr. Wood's additional arguments irrelevant. The BBA found that MRC P3005.3 applied and that the Building Official correctly interpreted the true intent of the 2009 Michigan Residential Code in applying MRC P3005.3. Mr. Wood's claim that the Building Official could have approved the permit under Section 104 or Appendix J of the Residential Code is irrelevant because it is simply an attempt to reargue what the BBA has already decided.

POTENTIAL PROPOSED MOTIONS ON NEXT PAGE → → → → → → →

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VARIANCE GRANTED

That in **BBA19-001**, the appeal for a variance from 2009 Michigan Residential Code P3005.3 for the work performed by Rooter MD at 1625 Waltham is **GRANTED** because the Board finds that the cost to comply with P3005.3 results in an **exceptional, practical difficulty** and the Board further finds that:

(a) The performance of the CIPP installation is adequate for its intended use and does not substantially deviate from the performance required by the code for the health, safety and welfare of the people of this state; and,

(b) The specific condition claimed by the applicant is neither so general nor recurrent in nature as to make the variance an amendment of the code. The specific condition that justifies the variance is _____. (To be filled in by BBA).

OR

VARIANCE DENIED

That in **BBA19-001**, the appeal for a variance from 2009 Michigan Residential Code P3005.3 for the work performed by Rooter MD at 1625 Waltham is **DENIED** because the Board finds that the cost to comply with P3005.3 is not an **exceptional, practical difficulty** and the Board further finds that:

(a) The performance of the CIPP installation is not adequate for its intended use and substantially deviates from performance required by the code for the health, safety and welfare of the people of this state; and,

(b) There is no specific condition claimed by the applicant to justify the variance.

Yeas:

Nays:

Date

Kenneth Winters, Chairperson, Building Board of Appeals

Copy received:

Date:

Applicant/Representative