

ANN ARBOR BUILDING BOARD OF APPEALS

PLUMBING INSPECTOR STAFF REPORT

Appeal Hearing for BBA17-002 for 3186 Oakwood Street, Ann Arbor, MI 48104

(Parcel Identification Number: 09-12-02-314-002)

Appeal Date: May 18, 2017

DESCRIPTION AND DISCUSSION

Rooter MD Plumbing LLC

31675 West Eight Mile Road

Livonia, MI 48152

1. Applicant states that LMK Technologies, LLC Performance Liner Lateral Lining System be allowed for use as it is adopted by the Michigan Plumbing Code 2012, Section 102.8, Referenced codes and standards and Chapter 14 – Referenced Standards.
2. Applicant states that the LMK Technologies, LLC Lateral Lining System should be exempt from a plumbing permit, based on the Michigan Residential Code 2009, MPC 2012 and Section 105.2 (d) work exempt from permits Michigan Rehabilitation Code for Existing Buildings 2015. R 408.30560
3. Applicant states that the pressure test should be exempt and not be required.
4. Applicant is stating that they should be allowed to obtain an annual right-of-way permit covering its annual projects within the City of Ann Arbor.

CODE INTERPRETATIONS

Response to #1 - The applicant has stated that the LMK product is approved through the Plumbing Code and the reference codes and standards.

On the contrary, section 102.8 (Michigan Plumbing Code) & R102.4 (Michigan Residential Code) will allow the codes and standards to be used in chapter 14 (MPC) or chapter 44 (MRC), but are further regulated by section 102.8.1 & 102.8.2 (Michigan Plumbing Code) and R102.4.1 & R102.4.2. Section 102.8.1 and 102.8.2 (MPC) and R102.4.1 and R102.4.2 indicates that the code will supersede the codes and standards when there are conflicts. To continue on, the code for the materials allowed to be used for sewer pipe in section 702.3 (MPC) - ("**Building Sewer Pipe.**

Building sewer pipe shall conform to one of the standards listed in Table 702.3.”) and P3002.2 (MRC) – “**Building sewer.** *Building sewer* piping shall be as shown in Table P3002.2. Forced main sewer piping shall conform to one of the standards for ABS plastic pipe, copper or copper-alloy tubing, PVC plastic pipe or pressure-rated pipe indicated in Table P3002.2.” Both tables (Residential Code and Plumbing Code) show various products with approved standards, but Table 702.3 and Table P3002.2 do not include ASTM Designation: F 1216 – 03 nor does it include NSF/ANSI 14 as provided by the applicant. Thus, the code will take precedents as the LMK product and above standards as provided by the applicant are not listed in the tables and are not an approved product for sewer pipe. – See Attached # 1 & 2 & 2A

Other information to take into consideration:

The second part (b) condition for justifying the variance from code to allow the use of the LMK Technologies Lateral Lining Systems shall be neither so general no recurrent in nature as to make an amendment of the code with respect to the condition reasonably practical or desirable. This request does not meet the condition (b) as required, per the Standards for Approval (PA230 Section 125.15.15 sec.15.) and should be denied.

A desired product that does not meet the code requirements can be submitted to the State of Michigan and may receive a Certificate of Acceptability. The product that is approved from the State may have conditions as part of that approval. There are four similar materials that have been approved in accordance with Act 230 of 1972 (see attached # 3), LMK Technologies, LLC Performance Lateral Lining System, is not one of them. Peter J. Wood has applied for and received a certificate of approval from the state of Michigan for a similar product (see attachment 4). This shows that he understands the process and requirements to get an alternative method or material approved by the state of Michigan (Certificate of Acceptability), in accordance with Section 21 of the Public Act 230 of 1972.

Act 230 of 1972

125.1521 Petition for approval of materials, products and methods; testing and evaluation; certificate of acceptability.

Sec. 21. A person may petition the commission to approve the use of a particular material, product, method of manufacture or method or manner of construction or installation. The petition shall be in writing on a form to be prescribed by the commission accompanied by such information and material as the commission may by rule require and by an initial fee. On receipt of the petition, the commission shall cause to be conducted testing and evaluation it deems desirable for the particular material, product, method of manufacture or method or manner of construction or installation. After the testing and evaluation, and after a hearing open to the public in which the results of the testing and evaluation are made part of the record, and the petitioner or any other interested party is allowed to present evidence in support of or against the petition, the commission may reject the petition in whole or in part, may in accordance with procedures established in this act amend the code in such manner as the commission deems appropriate, or may grant a certificate of acceptability for the particular material, product, method of manufacture, or method or manner of construction or installation. A petition shall not be rejected if the application is in proper form and the fees are paid, and if performance of the particular material, product, method of manufacture, or method or manner of construction or installation is adequate for its intended use and consistent with reasonable requirements for the health,

safety and welfare of the people of this state. The commission may attach any condition it deems appropriate to a certificate of acceptability. A material, product, method of manufacture, or method or manner of construction or installation shall be acceptable for use throughout this state in accordance with the terms of a certificate of acceptability issued with respect to it. A copy of each certificate of acceptability shall be sent or delivered by the commission to each governmental subdivision, however, failure of the commission to comply with this requirement does not prevent or delay effectiveness of a certificate of acceptability. A certificate of acceptability issued by the commission pursuant to this section shall not be used for advertising purposes.

In conclusion, the LMK CIPP product is not allowed without a change in the code or approval by the State of Michigan.

Response to #2 – The applicant has indicated that work to install – LMK Cured-In Place Pipe (CIPP) should be exempt from permits based on the Michigan Residential Code and the Michigan Rehabilitation Code for Existing Buildings - 105.2 (d) (work exempt from permits).

The work for the Cured-In-Place-Pipe, the LMK product, **is required to obtain a permit as per R105.1 “Required.** Any owner or owner’s authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the *building official* and **obtain the required permit.”**

The work allowed to be exempt from obtaining a permit is **R105.2 “Work exempt from permit – See Attached #5.** Exemption from the permit requirements of the code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of the code or any other laws or ordinances of this jurisdiction. Permits are not required for any of the following: (d) Plumbing permits shall not be required for the following:

(i) The stopping of leaks in drains, water, soil, waste or vent pipe. If any concealed trap, drainpipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, then the work is considered as new work and a permit shall be obtained and inspection made as provided in the code.

(ii) The clearing of stoppages or the repairing of leaks in pipes, valves, or fixtures, and the removal and reinstallation of water closets, if the repairs do not involve or require the replacement or rearrangement of valves, pipes, or fixtures. See attached # 5

The work exempt of a permit as referenced above in R105.2 and defined as “minor repair” per 338.3517 of the State Plumbing Act; would not include an installation of a LMK CIPP product. This type of installation is not considered a minor repair. See the definition below for minor repair.

338.3517 Definitions; J to M.

(e) “Minor repair” means a repair which involves only the clearance of stoppages, repair, or replacement of a faucet, valve, reinstallation of that same plumbing fixture provided that no modifications are made to the plumbing system, or residential domestic water treatment and filtering equipment. Minor repair does not include any of the following:

(i) The repair or replacement of a backflow preventer and air admittance valves.

(ii) A repair or replacement that is only a part of a larger or major renovation or repair.

An additional note should be added to the statement, as referenced in the actual standard supplied by the applicant, for the LMK product – the standard states on several occasions that this CIPP installation is considered a new pipe. See attached # 6

In conclusion, the LMK CIPP product is not considered a minor repair, so a permit is required.

Response #3 – The applicant is asking for an exemption to the pressure testing of the product.

Testing is required for all building sewer pipe including the LMK Cured in Place Pipe based on P2503.1, P2503.4. The State of Michigan has also required testing in the product approval certificates for similar such materials (LMK does not have a State of Michigan Certificate of Acceptability, for the approval of the CIPP LMK product). **See attached #7**

P2503.1 Inspection required. New plumbing work and parts of existing systems affected by new work or *alterations* shall be inspected by the *building official* to ensure compliance with the requirements of this code.

P2503.4 Building sewer testing. The *building sewer* shall be tested by insertion of a test plug at the point of connection with the public sewer, filling the *building sewer* with water and pressurizing the sewer to not less than 10-foot (3048 mm) head of water. The test pressure shall not decrease during a period of not less than 15 minutes. The *building sewer* shall be watertight at all points. A forced sewer test shall consist of pressurizing the piping to a pressure of not less than 5 psi (34.5 kPa) greater than the pump rating and maintaining such pressure for not less than 15 minutes. The forced sewer shall be water tight at all points.

In conclusion, the applicant is required to test the product as required by code.

Response #4 – Applicant is asking to have the ability to be granted the ability to obtain an annual permit fee for the public right-of-way.

This request is outside the scope of authority of the BBA. (The Building Official has not made any decision regarding issuance of any such permit, so there is no decision to appeal.)

RECOMMENDATION:

Staff would recommend that all four requests be denied as shown:

#1 - The LMK CIPP product is not a code approved product, nor has it received a Certificate of Acceptability, from the State of Michigan. Also, the second part (b) condition for justifying the variance from code to allow the use of the LMK Technologies Lateral Lining Systems 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. This request does not meet the condition (b) as required, per the Standards for Approval (PA230 Section 125.15.15 sec.15.) and should be denied.

#2 - The LMK Technologies Lateral Lining System installation is not exempt from permits as it is not considered a minor repair and would be considered as a new system.

#3 – The pressure testing of the product is required by the code and is also included in the State of Michigan conditions for use and installation.

#4 - The request is outside the scope of authority of the BBA

STANDARDS FOR APPROVAL:

PA 230 Section 125.15.15

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 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.