

# ANN ARBOR BUILDING/CONSTRUCTION BOARD OF APPEALS

## STAFF REPORT

Appeal Hearing for BBA18-006 for 1625 Waltham Drive

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

Appeal Date: November 15, 2018

### APPEAL REQUEST

Appeal by: 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

Applicant's desired relief:

1. A finding that SOP-501 (3.6.2016) applies to this permit.
2. A finding that there is no violation of MRC P3005.3
3. See attachment for additional request for relief.

Basis of Appeal:

The inspector did not apply the proper SOP and has no evidence that there is in fact non-compliance with P3005.3. See attachment to application for additional information.

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### **From Building Official to Members of the Building Board of Appeals:**

#### **A. Introduction**

Under the MRC, a person's **basis** for appealing to the BBA and the BBA's decision options are **limited** to the following:

- (1) that the true intent of the MRC or the rules governing construction have been incorrectly interpreted;
- (2) that the provisions of the MRC do not apply; or,
- (3) an equal or better form of construction is proposed.

#### **B. Issue for the Board raised by Rooter MD (Peter Wood)**

Mr. Wood performed **work at 1625 Waltham** to install cured-in-place-pipe ("CIPP")

Based on MRC 3005.3 (2009), Inspector Ryan Miller failed Rooter MD on a final inspection of work performed to install cured-in-place-pipe ("CIPP") at 1625 Waltham.

The issue for the Board is whether or not to uphold the inspector's decision to fail the **type** of work at 1625 Waltham. No other work at any other location is at issue in this appeal.

**C. MRC 3005.3 (2009)**

MRC 3005.3 provides as follows:

**P3005.3 Horizontal drainage piping slope.** Horizontal drainage piping shall be installed in uniform alignment at uniform slopes not less than  $\frac{1}{4}$  unit vertical in 12 units horizontal (2-percent slope) for  $2\frac{1}{2}$  inch (64 mm) diameter and less, and not less than  $\frac{1}{8}$  unit vertical in 12 units horizontal (1-percent slope) for diameters of 3 inches (76 mm) or more.

**D. The City's Claim and Evidence**

Claim: The BBA should uphold the Building Official's decision to fail the work **at 1625 Waltham** because Mr. Wood fails to show that (1) the true intent of the MRC or the rules governing construction have been incorrectly interpreted; (2) that the provisions of the MRC do not apply; and, (3) an equal or better form of construction is proposed.

Evidence: The video of the inspection of the work at 1625 Waltham and testimony of Building Official Glen Dempsey and Inspector Ryan Miller.

**E. Mr. Wood's Claims, Building Official's Responses, & Building Official's Conclusion and Recommendation.**

Mr. Wood bases his appeal on the claims (1) that the true intent of the MRC or the rules governing construction have been incorrectly interpreted and (2) that the provisions of the MRC do not apply.

***(1) Mr. Wood claims that the Building Official "did not apply the true intent of the code" in making his decision to fail the work at 1625 Waltham. (10/5/2018 Letter p 2, ¶ 6).***

***Mr. Wood's Evidence of Not applying the True Intent of the Code:***

"the City has previously approved permits which contain the 'issue' it now complains of" (10/5/2018 Letter p 3, ¶12).

Building Official's Response: the decision for the Board to consider is the decision to fail Mr. Wood's work at 1625 Waltham and not other work at other locations.

"example of the permit at 1517 Granada Av (PLUM-10-1441). See materials at Exhibit 4. The permit was issued to 'replace sewer from basement to manhole using pipe bursting.'" (10/5/2018 Letter p 3, ¶13).

Building Official's Response: The decision for the Board to consider is the decision to fail Mr. Wood's work (CIPP) at 1625 Waltham. The BBA should not consider other work types of work (pipe-bursting) at other locations.

"The Granada video is provided as Exhibit 5." (10/5/2018 Letter p 4, ¶12).

Building Official's Response: The decision for the Board to consider is the decision to fail Mr. Wood's work (CIPP) at 1625 Waltham. The BBA should not consider other work types of work (pipe-bursting) at other locations.

“At the Board meeting for this appeal Mr. Wood requests that inspector Don Ratliff be present to explain Granada other similar permits that were approved despite the presence of the water in the inspection videos.”  
(10/5/2018 Letter p 4, ¶12).

Building Official's Response: The decision for the Board to consider is the decision to fail Mr. Wood's work (CIPP) at 1625 Waltham. The BBA should not consider other work types of work (pipe-bursting) at other locations. There is no reason for Don Ratliff to be present because he was not the inspector of the work (CIPP) performed by Mr. Wood at 1625 Waltham.

“Please refer to additional videos dealing with trenchless installations that inspector Ryan Miller and others approved which also have the divot/water issue at Exhibit 6. eTrakit shows dozens of similar permits where no video was required at all. Take for example the job at 1605 Pontiac St (PLUM10-0272), where a complete Orangeburg sewer line was replaced using the pipe bursting method. The eTrakit notes (Exhibit 4) show an approval but no video review. This is also the case on PLUM10-0271, PLUM13-0220, to provide a few more examples. More will be provided at the meeting if necessary.”  
(10/5/2018 Letter p 4, ¶¶ 14, 15).

Building Official's Response: Same as responses above.

***BUILDING OFFICIAL'S CONCLUSION & RECOMMENDATION:*** The video of Mr. Wood's CIPP work at 1625 Waltham demonstrates that the work did not satisfy the requirements of P3005.3 for the reasons explained by the Building Official and Inspector Miller. Therefore, the BBA should uphold the Building Official's Decision.

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***Mr. Wood Claims that the Building Official “incorrectly applied the code in that P3005.3 requires concrete evidence that the slope requirement is not met. Mr. Wood also appeals on grounds that P3005.3 does not apply to CIPP installations which are trenchless and do not permit for accurate measurement of slope.”***  
(10/5/2018 Letter p 2, ¶ 6).

***Mr. Wood's Evidence of Incorrect Application of the Code and that P3005.3 Does not Apply to CIPP Installations.***

“P3005.3 requires concrete evidence that the slope requirement is not met.”  
(10/5/2018 Letter p 2, ¶ 6).

Building Official's Response: The video of the inspection of the work at 1625 Waltham and testimony of Building Official Glen Dempsey and Inspector Ryan Miller are concrete evidence that water is not draining properly because the slope does not satisfy the requirement of P3005.3.

“there is no evidence of violation of p3005.3. There is no evidence that the CIPP liner does not have the proper slope. The CIPP installed at Waltham was 4 inches in diameter. See Exhibit 2. Therefore, P3005.3 requires a 1 % slope requirement. Nothing contained in Mr. Miller's notice (Exhibit 2) explains how the City came to the conclusion that the 1 % slope was not met. Hey may argue that they "eye-balled" it. The problem with this method is that it is unfair to Mr. Wood and other permit holders because it does not allow for uniform application of the code. P3005.3 is written in precise language, which clearly requires 1 % or 2% slope. In order to make such a determination, measurements need to

be taken. There is no evidence that Mr. Miller took any measurements. Mr. Miller elected to violate Mr. Wood for not meeting the 1 % slope. If that is the case then due process requires that Mr. Miller present evidence of the failure to meet the 1 % slope requirement. There is no evidence. Therefore, the Code has been incorrectly applied to Mr. Wood. “ (10/5/2018 Letter p 4, ¶ 17).

Building Official’s Response: same as above.

“P3005.3 does not apply, Mr. Wood will discuss Standard Operating Procedure 501 (Exhibit 8), which expressly provides the criteria that should be applied to inspections of CIPP installations.” (10/5/2018 Letter p 2, ¶ 6).

Building Official’s Response: The only criteria that the Building Official will apply is the criterial in the Michigan Residential Code. The Building Official applied the criteria in P3005.3 to make its decision on the work performed by Mr. Wood at 1625 Waltham. The SOP is unofficial, drafted by a previous Building Official, and not criteria to be applied to this specific project. Per code section R102.4, Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply. Also, the standard ASTM F1216-09 has never been approved and adopted by the MRC 2009 code. The ASTM standard can only be used as a reference, if so chosen by the Building Official and cannot supersede the code.

“The City has previously recognized that P3005.3 does not apply to CIPP installations. It should be required to follow its own rules.” (10/5/2018 Letter p 5, ¶ 18).

Building Official’s Response: The Building Official is obligated to apply P3005.3. The City cannot make its own rules.

“Mr. Miller has issued 8 notices for 8 different CIPP installation permits for “Failure to comply with 3005.3”

Building Official’s Response: Eight (8) notices have been referred to for 8 different CIPP installation permits. This application for Construction Code Appeal can only be heard for the property at 1625 Waltham Drive. One of the requirements and conditions of Public Act 125.1515 Sec. 15 “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”.

***BUILDING OFFICIAL’S CONCLUSION & RECOMMENDATION:*** The video of Mr. Wood’s CIPP work at 1625 Waltham is concrete evidence that the work does not satisfy the criteria in P3005.3 and that P3005.3 applies to Mr. Wood’s work because it is the only criteria that the Building Official can apply. The SOP does not and cannot change the rules in the MRC. While there are situations that may allow a permissible variance, this is not one. Public Act 125.1515 Sec. 15 has two conditions of which one condition states “(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. Therefore, the BBA should uphold the Building Official’s Decision.

**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 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.

**POTENTIAL PROPOSED MOTIONS ON NEXT PAGE**

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**APPEAL GRANTED**

That in Case \_\_\_\_\_, **the appeal of the Building Official’s decision** that the work performed by Rooter MD at **1625 Waltham** did not pass final inspection is **GRANTED** and the Building Board of Appeals **REVERSES** the Building Official’s decision for the reason(s) that *[state reason in motion]*:

- (1) The true intent of the 2009 Michigan Residential Code and P3005.3 governing the construction at 1625 Waltham have been incorrectly interpreted by the Building Official;
- (2) The provisions of 2009 Michigan Residential Code P3005.3 do not apply to the construction at 1625 Waltham;
- (3) The applicant has proposed an equal or better form of construction.

***[Chairman to check box(es) following vote]***

**OR**

**APPEAL DENIED**

That in Case \_\_\_\_\_ **the appeal of the Building Official’s decision** that the work performed by Rooter MD at **1625 Waltham** did not pass final inspection is **DENIED** and the Building Board of Appeals **AFFIRMS** the Building Official’s decision for the reason(s) that *[state reason in motion]*:

- (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;
- (3) The applicant has not proposed an equal or better form of construction.

***[Chairman to check applicable box(es) following vote]***

Yeas:

Nays:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kenneth Winters, Chairperson  
Building Board of Appeals