

OFFICE MEMORANDUM



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DATE: August 10, 2005

TO: Division Code Staff

FROM: Scott McLellan

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SUBJECT: What is Appealable to the State Appeals Board

Minnesota Rule part 1300.0230 Subp. 1 states in part,

In order to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the *application* and *interpretation* of the code, there shall be and is hereby created a board of appeals.

Minnesota Rule part 1300.0230 Subp. 3 states,

An application for appeal shall be based on a claim that

- [1] the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted,**
- [2] the provisions of this code do not fully apply, or**
- [3] an equally good or better form of construction is proposed.** The board shall have no authority to waive requirements of this code.

Thus, there are only three (3) general cases for an appeal in the code. Each case in 1300.0230 Subp. 3 is referring to the “application” or “interpretation” (in Subp. 1) of a building code provision by the building official. In other words, one can appeal how the building official applies or interprets a provision of the code. **One cannot appeal the enforcement of a code requirement.** This is supported by the last phrase in Subp. 3; *The board shall have no authority to waive requirements of this code.*

The *2000 International Building Commentary* states on page 20,

“The intent of the appeal process is not to waive or set aside a code requirement; rather it is intended to provide a means of reviewing a building official’s decision on an interpretation or application of the code...”