

STATE OF MINNESOTA

STATE BUILDING CODE BOARD OF APPEALS

In the Matter of the Appeal of
Summit Management,

Appeal No. 22-02

FINAL DECISION
Dated: June 9, 2022

This matter came on for hearing before the State Building Code Board of Appeals (“Board”) on May 25, 2022. The hearing was held by video conference as the Board determined, pursuant to Minn. Stat. § 13D.021, that an in-person meeting was not practical or prudent because of the COVID-19 pandemic. The record closed at the conclusion of the hearing.

Mark Lambert, Developer at Summit Management, Jeff Richtman, Operations Manager at Summit Management, Norm Cole, architect at Cole Group Architect appeared for applicant and appellant Summit Management (“Appellant”). Corey Murphy, Building Official for the City of Forest Lake (“Building Official”), appeared on behalf of Respondent City of Forest Lake.

The issues in this appeal are whether the Building Official correctly interpreted and applied the 2020 State Building Code by determining that window cleaning anchors were required for the four-story Timber Ridge II Luxury Apartments located at 22500 and 22600 Everton Avenue North, Forest Lake, Minnesota, 55025 (“Project”). Appellant contends that the Building Official incorrectly interpreted the true intent of the State Building Code because it argues the State Building Code does not apply to its building due to Appellant’s exclusive use of a ground level window washing system. Alternatively, Appellant argues an equally good or better method for window cleaning is being proposed.

Minn. R. 1305.0011 provides that the International Building Code (“IBC”) is incorporated by reference and made part of the State Building Code, except as amended or qualified by applicable provisions of the Minnesota Rules. Minnesota Rule 1305.3144 amends Chapter 31 of the IBC by adding Section 3114 regarding window cleaning anchors. Section 3114 states that building anchors for window cleaning safety shall be provided for buildings four or more stories above grade plane. Minnesota Statutes section 326B.106, subdivision 4(m) states that the State Building Code must require the installation of dedicated anchorages for the purpose of suspended window cleaning on new buildings four stories or greater.

Appellant provided testimony that the Project’s proposed building is four stories, with a hip roof and a roof hatch. Appellant stated that if it uses suspended window washing, a washer will need to crawl up onto the roof hatch, repel down a 512 pitch to the gable edge of the hip roof, maneuver around the gable edge to clip to the hook that is located on the underside of the eve, and

then repel over the roof edge to wash the windows. Appellant stated that a non-suspended ground washing system is much safer. Appellant additionally stated that installing window anchors would cost approximately \$64,000 per building for a total of \$128,000, which it contends is an unreasonable cost for a system that will not be used. Appellant testified the proposed alternative window washing system has successfully been used for cleaning windows up to six stories. Appellant stated it submitted a request for alternative methods and means to the City of Forest Lake pursuant to Minnesota Rule 1300.0110, subpart 13. Subpart 13 provides that “an alternative material, design, or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the code, and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in the code in quality, strength, effectiveness, fire resistance, durability, and safety.”

The Building Official testified that he had multiple conversations with Mr. Lambert about the interpretation of Section 3114. The Building Official stated that Section 3114 allows for only three exceptions to window anchors and none of the exceptions apply to the Project. The Building Official testified that he considered that future owners of the building may not use a non-suspension ground window washing system and that the State Building Code does not give an exception for the type of window washing proposed by Appellant. The Building Official testified that he understood legislation was proposed which would eliminate the window anchorage requirement, but the Building Official can only approve what is in the State Building Code.

The Board discussed whether Minnesota Statutes section 326B.106 was amended in the last legislative session. Appellant stated that it had engaged a lobbyist to remove the window anchorage requirement from section 326B.106 and, although the bill was not passed during the last legislative session, it was resurrected in both the House and Senate Conference Committees, which Appellant claims demonstrates legislative intent to remove the anchorage requirement. The Board discussed whether the Building Official could accept an alternative proposal that would waive a statutory requirement. The Board stated that every time the State Building Code is amended, the Minnesota Department of Labor and Industry must complete a Statement of Need and Reasonableness (“SONAR”) to explain amendments to the State Building Code. The SONAR for the window cleaning anchorage amendment states the modification is reasonable and necessary because section 326B.106, subdivision 4(m) requires the installation of anchorages for buildings that are four or more stories in height. While the Building Official has authority to accept an alternative method of construction to the State Building Code pursuant to Minnesota Rule 1300.0110, subpart 13, the Building Official cannot accept an alternative method that conflicts with a requirement mandated by statute.

Pursuant to the Board’s authority under Minn. R. 1300.0230, and based upon the entire record including all documents, testimony, and arguments, the Board moved to affirm that the decision by the Building Official correctly applied the State Building Code requiring window washing anchors and that the Board has no authority to waive the requirements of the State Building Code or Minnesota Statutes section 326B.106. The vote was unanimous in favor of the motion and the motion carried.

RIGHTS OF APPEAL

This is the final decision of the State Building Code Appeals Board in this matter. A person aggrieved by this decision may, within 180 days of its date, appeal to the Commissioner of Labor and Industry as set forth in Minn. Stat. § 326B.139.



SCOTT MCKOWN, Chair
State Building Code Appeals Board