

STATE OF MINNESOTA

STATE BUILDING CODE BOARD OF APPEALS

In the Matter of the Appeal of  
Larry J. Farris, BKV Group

Appeal No. 21-03

**FINAL DECISION**  
**Dated: Dec. 1, 2021**

This matter came on for hearing before the State Building Code Board of Appeals (“Board”) on November 4, 2021. 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 because of the COVID-19 pandemic. The record closed at the conclusion of the hearing.

Larry J. Farris appeared for applicant and appellant BKV Group (“Appellant”). Scott Anderson, Plan Review Supervisor, appeared on behalf of respondent City of Minneapolis. Ken Staloch, Building Official for the City of Minneapolis (“Building Official”) provided testimony for respondent City of Minneapolis.

The issue in this appeal is whether the Building Official correctly interpreted and applied the 2020 State Building Code (“State Building Code”) to the Dinkytown Multi-family Housing project located at 405 15th Avenue SE, Minneapolis, Minnesota, 55415 (“Project”). Specifically, the Building Official determined the Project’s exterior walls facing the courtyard constituted a vertical offset in the horizontal assembly separating the upper and lower buildings under Section 510.2 of the State Building Code. Thus, the Building Official determined the exterior walls needed to have at least a three-hour fire-resistance rating with zero or limited protected openings for the buildings to be considered separate and distinct buildings.

Appellant contends that the Building Official incorrectly interpreted the true intent of the State Building Code by failing to consider that a vertical offset assumes there is a building on both sides of the offset. Appellant argues that because there is no building on the courtyard side of the wall, the walls are regulated based on Type of Construction and Fire Separation Distance pursuant to Chapter 6 of the State Building Code. The Building Official contends that the Project’s design as submitted does not comply with Section 510.2 of the State Building Code and that the State Building Code does not allow for an exception allowing discontinuity of the horizontal assembly when the vertical offset becomes so great it becomes an exterior wall.

Appellant stated that the type of construction in the Project’s design consists of two stories above grade plane of Type I-A, along with five stories of Type III-A, supported by the Type I-A structure below. The Type I-A and Type III-A constructions are separated with a three-hour horizontal assembly, which Appellant argues complies with Section 510.2 of the State Building Code. Appellant noted the separation between the Type I-A and Type III-A buildings is a post-

tension concrete slab with concrete columns. Appellant stated that the State Building Code requires that the building above is separated from the building below by a horizontal assembly, but Appellant argued the State Building Code does not contain language requiring that the horizontal assembly continue beyond the exterior wall of the building.

Appellant stated that the vertical offset provision was inserted into the 2015 International Building Code to address buildings that are built on sloping sites; however, Appellant does not believe it was intended that exterior walls be treated as vertical offsets. Appellant provided an e-mail communication from Michael Giachetti, Technical Manager of the engineering division of the International Code Council (“ICC”). Appellant noted the ICC official’s opinion that because the walls in question are facing a courtyard and amenity space, they can be treated similar to exterior walls which would need to be rated due to the type of construction and fire separation distance.

The City of Minneapolis stated it has consistently interpreted the State Building Code to require the lower building to be separated from the space above and that the Project’s design as presented does not separate the Type I-A building below from the space above. The City of Minneapolis noted that the definition of horizontal assembly in Section 202 of the State Building Code includes a floor *or roof* assembly and therefore must continue for the entire length of the structure below. The City of Minneapolis stated the State Building Code does not provide a limit on the height of a vertical offset and that there is no exception in the State Building Code to the three-hour rating for the vertical offset. The Building Official stated that the City of Minneapolis has strictly interpreted Section 510.2 to require a three-hour rating because it is a Special Provision under the State Building Code.

The Board discussed that, according to the 2015 Public Comment Agenda, the reason for adding a vertical offset requirement to Section 510.2 was to accommodate elevation changes and not to address the condition presented in the Project’s design. The Board noted that the Project’s design shows that the lower building is Type I-A construction and is completely separated from the Type III-A building above. The Project’s design, as presented, shows the horizontal assembly continues throughout the Type I-A construction and terminates at the exterior walls, both on the street and courtyard sides of the building.

Pursuant to the Board’s authority under Minn. R. 1300.0230, and based upon the entire record including all documents, testimony, and arguments submitted to the Board, the Board moved that the Appellant’s interpretation of the State Building Code was correct and that the Building Official incorrectly applied the vertical offset provision of Section 510.2, Item 1, of the State Building Code to the Project plan submitted by Appellant. The roll call vote was unanimous, 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.

A handwritten signature in black ink, appearing to read "Scott McKown", written over a horizontal line.

SCOTT McKOWN, Chair  
State Building Code Appeals Board