

STATE OF MINNESOTA

STATE BUILDING CODE BOARD OF APPEALS

In the Matter of the Appeal of
Heritage Commercial Contracting, LLC¹,

Appeal No. 22-03

FINAL DECISION

Dated: October 13, 2022

This matter came on for hearing before the State Building Code Board of Appeals (“Board”) on September 13, 2022. The record closed at the conclusion of the hearing.

Jeff Willett, Robert Tenoff, and Roger Axel appeared for applicant and appellant Heritage Commercial Contracting, LLC (“Appellant”). Dan Hauck (“Building Official”) and Sean Brown (“Building Inspector”) appeared for respondent City of Blaine.

Minnesota Rule 1305.0100 (1983) provides that the 1982 Uniform Building Code (“UBC”) is incorporated by reference and made part of the State Building Code, except as amended or qualified by applicable provisions of the Minnesota Rules. The issue in this appeal is whether the Building Official correctly interpreted the UBC to the Clover Leaf Townhome Association Re-Roofing Project (“Project”), located at Cloverleaf Farms Condominiums, 96th Lane NE, Blaine, Minnesota (“Cloverleaf”). Specifically, the Building Official determined that the State Building Code required the removal of the roof ventilation systems installed on the Cloverleaf roofs because they were placed within three feet horizontally of the assumed property lines between the dwelling units at Cloverleaf, in violation of section 504 and Table No. 5-A of the UBC. Appellant contends that the Building Official incorrectly interpreted the true intent of the State Building Code by ordering the removal of the roof ventilation corrections, which were installed to improve persistent ice damming issues on the roofs of the Cloverleaf buildings.

Cloverleaf is made up of 13 buildings with eight units in each building, totaling 104 dwelling units. Appellant contends that the original building official misclassified Cloverleaf’s buildings as R-3 occupancies instead of R-1 occupancies. The parties agreed that the Cloverleaf buildings are considered townhomes and that townhomes were not specifically addressed in the UBC. According to section 405 of the UBC, a “Dwelling” is any building or portion thereof which contains not more than two dwelling units. Because the Anoka County property records show that there is one building on each Cloverleaf property with eight dwelling units per building, Appellant argues that Cloverleaf’s buildings are apartment houses, rather than dwellings. An “Apartment House” is defined in section 402 of the UBC as “any building or portion thereof which contains three or more dwelling units.” Pursuant to section 1201 of the UBC, dwellings are categorized as R-3 occupancies and apartment houses are categorized as R-1 occupancies. Appellant thus

¹ The application to the State Appeals Board in the above-referenced appeal erroneously refers to the applicant/Appellant as Heritage Commercial Construction, LLC.

contends that the buildings should be considered R-1 occupancies. The Building Official testified that the buildings are listed as R-3 occupancies on the Certificate of Occupancies and that this classification was consistent with multiple properties in the area at the time.

The Building Official stated that, pursuant to section 504(c) and Table No. 5-A, there are assumed property lines between the dwelling units in each Cloverleaf building. The Building Official additionally stated that each exterior wall between the dwelling units must have a fire resistance of one hour. The Building Official further cited section 4304 of the UBC, which states that the fire-resistive rating shall be maintained for fire-resistive exterior wall constructions passing through attic areas. The Building Official contends that openings in exterior walls, including the roof and attic ventilation corrections installed during the Project, cannot be placed less than three feet horizontally from the assumed property lines that extend through the Cloverleaf buildings' attics.

Appellant argues that the walls between the dwelling units in each Cloverleaf building are interior walls, not exterior walls. Appellant states that the exterior walls instead surround the perimeter of each building and there is only one building on each Cloverleaf property. Appellant also argues that the roof is not an exterior wall pursuant to section 424 of the UBC, which defines an "Exterior Wall" as any wall which defines the exterior boundaries of a building, and which has a slope of 60 degrees or greater with the horizontal plane. Appellants argue that there are no assumed property lines between dwelling units and that one can only assume a property line under section 504 of the UBC if there are multiple buildings on the same property. Appellant stated there are one-hour fire partitions between dwelling units in each Cloverleaf building; however, Appellant argues that the fire partitions do not extend vertically through the attics. Rather, Appellant stated the assemblies in the Cloverleaf attics are draft stops, which were constructed to minimize the movement of air through the space. Appellant stated that the two-layer assembly on the ceiling of the dwelling units eliminated the need to put fire-resistance rated assemblies in the Cloverleaf attics and that the UBC does not require draft stops to meet fire-resistance ratings. Appellant additionally stated that there is no explicit language in the UBC barring the use of ridge vents in a roof above a draft-stop. Furthermore, because Appellant claims there are no exterior walls or assumed property lines extending vertically through the Cloverleaf attics, the UBC does not prohibit the use of ridge vents within three feet of the roof ridge.

The Board discussed that only one permit appeared to be issued per building for the Project. The Board also discussed that the surveys do not appear to show lot lines between each dwelling unit in the Cloverleaf buildings. The Board noted that the assemblies in the attic appeared to be constructed as draft stops, as contemplated in section 2516 of the UBC, rather than fire-resistive assemblies. The Board stated that the UBC does not require vertical continuity through the draft stops in the attics and there is nothing in the UBC that prohibits putting a ridge vent over a draft stop or that requires draft stops to have fire-resistant ratings.

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 determine that the Building Official did not correctly apply the State Building Code and that the Board does not affirm the decision of the Building Official. 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.

A handwritten signature in black ink, appearing to read "Scott Mckown", written in a cursive style.

SCOTT MCKOWN, Chair
State Building Code Appeals Board