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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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**DOCUMENT #08-25**

February 21, 2008

TO: Members of the Construction Code Commission

FROM: Irvin J. Poke, AIA

SUBJECT: Request for Interpretation by Lee Schwartz
Michigan Building (MBC), Residential (MRC) and Rehabilitation (MRCEB) Codes Sections 102.6, R102.7 and 101.4 Respectively

Question: When no additions, alteration, or repairs are being performed on the structure, the legal occupancy of the structure has not changed and the structure has no particularized hazard which requires abatement, do Sections R102.7 of the MRC, Section 102.6 of the MBC and Section 101.4 of the MRCEB allow for the building department to apply, on a general or occupancy group basis, a current code requirement to existing buildings?

Answer: No.

Discussion: The intent of MBC Section 102.6 is that existing buildings are allowed to remain in legal use and occupancy and not subject to the application of the code until it is altered, repaired or not properly maintained. The section reads as follows:

> **102.6 Existing structures.** The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the *International Property Maintenance Code* or the *International Fire Code,* or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

MRC Section R102.7 and MRCEB Section 101.4 contain similar language. Existing buildings in good repair have always been considered to be "grandfathered" against the requirements of the code when it is updated. This is to avoid the peril of making every building illegal each time a new code is adopted.

A home with a basement that was constructed prior to the 2000 Michigan Building Code requirement for emergency escape windows in basements is permitted to remain as is. The statement "or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public" should be limited to issues of disrepair that are not addressed by the code, and is not the building official's authority to require upgrades in construction when no construction is undertaken.

MICHIGAN ASSOCIATION OF HOME BUILDERS

December 11, 2007

Mr. Donald Pratt
Chairman, State Construction Code Commission
Bureau of Construction Codes
Department of Labor and Economic Growth
P.O. Box 30254
Lansing, MI 48909

Dear Mr. Pratt:

The Stille-DeRossett-Hale Single State Construction Code Act (Public Act 230 of 1972 as amended) provides for the statewide application of both the Act and the State Construction Code. The Act also provides for the State Construction Code Commission to oversee uniform interpretation and enforcement of the State Construction Code Act. In this regard, the commission issues both technical bulletins which provide clarification on issues which arise regarding code administration and enforcement and formal interpretations of code requirements.

The Michigan Association of Home Builders is requesting the State Construction Code Commission to issue formal interpretations on the following two questions.

1. An issue has arisen regarding the necessity to obtain a building permit for non-emergency repairs.

Section 105.2.2 of the 2003 Michigan Residential Code governs the issuance of permits for repairs. This section provides that "***Application or notice to the building official is not required for ordinary repairs to structures*** *(emphasis added), replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles. Such repairs shall not include the cutting away of any wall, partition, or portion thereof, the removal or cutting of any structural beam of load bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring, or mechanical or other work affecting public health and general safety.*"

Section R202 Definitions defines "Repair" as "*The reconstruction or renewal of any part of an existing building for the purposes of its maintenance.*"

The Michigan Association of Home Builders is requesting a formal interpretation from the Commission on the following question:

"May a building department require a building permit for an ordinary repair such as the residing of a structure where the repair does not include any of the prohibited actions found in R105.2.2?"

2. An issue has arisen over the interpretation of Section R102.7 Existing Structures of the 2003 Michigan Residential Code and R102.6 Existing Structures of the 2003 Michigan Building Code.

The Existing Structures language found in both of the above cited code sections as well as Section 101.4 of the 2003 Michigan Rehabilitation Code for Existing Buildings reads as follows: "*The legal occupancy of any structure existing on the date of the adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the International Property Maintenance Code, or the International Fire Code, or as deemed necessary by the building official for the general safety, and welfare of the occupants and the public.*"

Local Construction Boards of Appeal are allowed to grant variances from the code only where "*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.*"

Additionally, once plans have been approved or the permit has been issued, the code under which the project was approved/issued is the applicable code throughout the completion of the project. If a new code becomes effective during the construction process any new or changed requirements it contains cannot be applied to the project.

It has been asserted that, rather than restricting a building department from enforcing current code requirements on existing buildings except in cases where there is an particularized hazard which requires abatement through the application of a specific code provision to assure the safety of occupants within an individual building or structure, the language "*as deemed necessary by the building official for the general safety and welfare of the occupants and the public*" allows for the wholesale application of current code requirements to entire classes of existing structures legally in existence on the date of the adoption of the code, even when no additions, alterations or repairs are being performed on the structure, the legal occupancy of the structure has not changed and no particularized hazard exists.

The Michigan Association of Home Builders is requesting a formal interpretation from the Commission on the following question:

"When no additions, alterations or repairs are being performed on the structure, the legal occupancy of the structure has not changed and the structure has no particularized hazard which requires abatement, do Sections Section R102.7 of the MRC, Section R102.6 of the MBC and Section 101.4 of the MRCEB allow for a building department to apply, on a general or occupancy group basis, a current code requirement to existing buildings?"

An example of such an application would be a building department requiring homes with basements which were built before the 2000 Michigan Residential Code requirement for emergency escape and rescue openings appeared in the code to retrofit those basements by installing those openings when no work is being done in the structure, the legal occupancy of the structure has not changed and no particularized hazard exists.

Please feel free to contact me if you have any questions or if I can offer you any further information.

With warm personal regards,

Lee Schwartz
Executive Vice President for Government Relations
Michigan Association of Home Builders