

**STATE OF FLORIDA
BUILDING COMMISSION**

In the Matter of

JOHN O'CONNOR,
MARION COUNTY BUILDING
OFFICIAL,

Case #: DCA05 DEC-216

Petitioner.

_____ /

DECLARATORY STATEMENT

The foregoing proceeding came before the Florida Building Commission (the "Commission") by a petition from John O'Connor, Marion County Building Official (the "Petitioner") which was received on November 8, 2005. Based upon the statements in the Petition and the materials subsequently submitted, it is hereby ORDERED:

Findings of Fact

1. The petition is filed pursuant to § 120.565, Florida Statutes, and must conform to the requirements of Rule 28-105.002, Florida Administrative Code.
2. The Petitioner is responsible for enforcement of the Florida Building Code within unincorporated Marion County
3. A contractor has requested that the Petitioner approve a fiberglass duct complying with Underwriters Laboratories (UL) 181 and the requirements of the Sheet Metal and Air Conditioning Contractors National Association, Inc. (SMACNA), and the North American Insulation Manufacturers Association (NAIMA) "Fibrous Glass Duct Construction Standards" as an acceptable alternative to No. 26 gage sheet metal for the construction of ducts in a garage of a residence governed by the Florida Building Code, Residential Volume.

4. The Petitioner asks whether it is the intent of § R309.1.1, Florida Building Code, Residential Volume (2004, as amended 1/05) to prohibit Fiberglass Duct Board from being used in a residential garage by calling out No. 26 gage sheet metal ducts as the prescriptive duct material to be used in that application. The Petitioner also inquires as to what criteria he should use to evaluate an acceptable alternative to No. 26 gage sheet metal, as allowed by § R309.1.1.

CONCLUSIONS OF LAW

1. The Florida Building Commission has the specific statutory authority to interpret the provisions of the Florida Building Code by entering a declaratory statement.

2. § R309.1.1, Florida Building Code Florida Building Code, Residential Volume, (2004, as amended 1/05) states as follows:

Duct penetration. Ducts in the garage and ducts penetrating the walls or ceilings separating the dwelling from the garage shall be constructed of a minimum No. 26 gage (0.48 mm) sheet steel or other approved material and shall have no openings into the garage.

3. § 202, Florida Building Code, Building Volume (2004, as amended 1/05), defines "[a]pproved" as "acceptable to the building official."

4. § 104.11, Florida Building Code, Building Volume (2004, as amended 1/05), Alternate Materials, Design and Methods of Construction and Equipment, reads:

The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. 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 provisions of this code, and that the material,

method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

5. The answer to the first question is that in addition to No. 26 gage sheet steel, § R309.1.1 allows "other approved material." The clause "other approved material" implies that there could be acceptable alternative duct types. Other approved materials shall be of equivalent flame and smoke rating as 26 gage metal.

6. The intent of § R309.1 is to create a modified fire-rated separation between the attached garage and the dwelling. However, while there are many "equivalent" ducting materials capable of transmitting air, they may not have "equivalent" flame and smoke rating. As used within the contents of this application the term "equivalent ducting" means a material equal in strength, combustibility, flame and smoke rating as 26 gage metal; or enclosed within a rated assembly not open to the garage; or the penetration between the dwelling and garage is protected with an approved damper and installed in an approved manner. Equivalent ducting shall run from equipment within the garage and completely through the dwelling and garage separation with no opening serving the garage.

7. The answer to the second question is that the building official can approve other kinds of ducts by utilizing the criteria of § 104.11, including finding that the proposed design is satisfactory and complies with the intent of the provisions of the Florida Building Code, and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

8. For information purposes, attached hereto as Exhibit A is a recent UL testing providing evidence that Class 1 rigid duct 1" thick performed to a level equal or greater than that of the 26 gage metal with respect to fire penetration.

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with § 120.68(2)(a), Fla. Stat. (2004), and with Fla. R. App. P. 9.030(b)(1)(C) and 9.110(a). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Commission, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Commission. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Fla. Stat. (2004).

DONE AND ORDERED this _____ day of _____, 2006, in Coral Gables, Miami-Dade County, State of Florida.

Raul L. Rodriguez, AIA, Chair
Florida Building Commission
Department of Community Affairs
Sadowski Building
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to the following by the method indicated on this _____ day of _____, 2006.

PAULA P. FORD
Commission Clerk

Via U.S. Mail:

John O'Connor, Building Official
Marion County Building Department
2631 S.E. 3rd Street
Ocala, Florida 34471-9101

Via Hand Delivery

Mo Madani, Planning Manager
Codes and Standards Section
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100