

**STATE BUILDING CODE TECHNICAL REVIEW BOARD  
MEETING  
June 15, 2017  
Glen Allen, Virginia**

Members Present

Mr. J. Robert Allen, Chairman  
Mr. James R. Dawson, Vice Chairman  
Mr. W. Keith Brower  
Mr. Daniel Crigler  
Mr. Joseph Kessler  
Mr. E. G. Middleton, III  
Ms. Joanne Monday  
Mr. W. Shaun Pharr, Esq.

Members Absent

Mr. Matthew Arnold  
Mr. Vince Butler  
Mr. Alan D. Givens  
Mr. Eric Mays, PE  
Ms. Patricia S. O'Bannon  
Mr. Aaron Zdinak, PE

Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order by the Chairman at approximately 10:15 a.m.

Roll Call

The attendance was established by the Chairman due to the Secretary being absent. A quorum was present. Mr. Justin I. Bell, the board's legal counsel from the Attorney General's Office was also present.

Election of Secretary

The Chairman advised the Review Board members that Cindy Davis, the Deputy Director of the Division of Building and Fire Regulation with DHCD, recommended Vernon Hodge from her staff to serve as acting secretary due to the current secretary taking a job with the City of Alexandria.

After consideration, Mr. Dawson moved to elect Mr. Hodge as acting secretary until January of 2018. The motion was seconded and passed unanimously.

Mr. Hodge noted that as is customary, staff would prepare a certificate of appreciation for the Review Board members' review commemorating Mr. McMahan's service to the board.

Approval of Minutes

Prior to consideration of the prior minutes, Mr. Hodge distributed correspondence from board member Alan Givens. After discussion, Mr. Crigler suggested that while Mr. Givens should coordinate any concerns with the Virginia Association of Plumbing, Heating and Cooling Contractors, his participation on the board was beneficial in whatever capacity possible. Other board members echoed that sentiment. Mr. Hodge indicated the board members' well wishes would be communicated to Mr. Givens by staff and his continued participation on the board encouraged.

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Approval of Minutes  
(continued)

In consideration of the minutes from the May 19, 2017 meeting, it was noted that the word “testimony” on line four of page two should be changed to the word “comments,” and that Mr. Paul Emerick, legal counsel for Fairfax County, should be added as being present in Appeal No. 17-1 on page three. Ms. Monday moved to approve the minutes as presented in the Review Board’s agenda package with those changes. The motion was seconded by Mr. Crigler and passed unanimously with Messrs. Dawson and Kessler abstaining.

The Chairman opened the meeting for public comments. Mr. Hodge advised that no one had signed up for public comments.

Approval of Final Orders

Appeal of Nihad AliAkbar; Appeal No. 17-1:

Mr. Pharr moved to approve the final order with the replacement of the last paragraph in the “Findings of the Review Board” section with the following:

The Board finds that failure of the notice issued by FDCCC to explicitly reference VCC Section 119, a requirement purposely adopted by the Board of Housing and Community Development (BHCD) in VCC Section 115.2, is not merely a technical violation. Section 119 of the VCC contains many important provisions setting out specific obligations of counties and municipalities regarding the establishment and operation of local appeals boards. The requirements placed upon counties and municipalities by Section 119, correspondingly, create important rights for persons aggrieved by the local building department’s application of the USBC or the refusal to grant a modification to the provisions of the USBC. Failure by FDCCC, or the local building official of any jurisdiction to explicitly reference VCC 119, as required by the BHCD, is a failure to inform aggrieved persons of these rights.

On this issue, the Review Board finds that although the Notice contained information about filing appeals, it did not explicitly reference VCC Section 119, as required in VCC Section 115.2.

The motion was seconded by Ms. Monday and passed unanimously.

Ms. Cindy Davis, Deputy Director of the Division of Building and Fire Regulation of DHCD, was present and informed the board members that an advisory had gone out to local building departments concerning the referencing of the appeals provisions in notices of violation and that online training would be provided.

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New Business

Appeal of Anthony T. Grant; Appeal No. 17-3:

A hearing convened with the Chairman serving as the presiding officer.

The following persons were sworn in and given an opportunity to present testimony:

Anthony T. Grant, Jr.  
Stanley Skinner, for the City of Suffolk  
Larry B. Stokes, for the City of Suffolk  
Kenneth E. Bullock  
Joseph A. Wright, witness for Mr. Bullock

Also present were:

William E. Hutchings, Jr., Esq., counsel for the City of Suffolk  
Chris Falk, Esq., counsel for Bullock

Prior to testimony, Mr. Falk raised objections to proceeding with the hearing based on there not being a final decision by the City of Suffolk Board of Building Code Appeals (City appeals board) and that the Review Board staff document in the appeal stated the applicable code was the 2012 edition. After discussion, Mr. Middleton moved to continue the case for thirty days. The motion was seconded by Mr. Dawson and after further discussion a vote was taken. The motion failed.

The Chairman proceeded with the hearing concerning the issue of Section N1104.2 of the International Residential Code (IRC).

One exhibit was submitted by Mr. Grant as follows:

Appellant Exhibit A – Roofing report

After testimony concluded on the issue of Section N1104.2 of the IRC, the Chairman closed the hearing. Prior to the deliberation of that issue, the board members conducted a working lunch.

A petition for reconsideration of Appeal No. 16-8 was distributed to the board members. Mr. Hodge distributed copies of the relevant laws and Mr. Bell addressed the legal aspects of the petition. After discussion, Mr. Brower moved to deny the petition. The motion was seconded by Mr. Kessler and passed with Mr. Pharr abstaining from the vote.

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New Business  
(continued)

After the working lunch, deliberations were held on the issue involving Section N1104.2 of the IRC. After discussion, Mr. Crigler moved to remand the issue to the City appeals board. After further discussion, Mr. Crigler withdrew the motion and Mr. Kessler moved to overturn the decision of the building official and City appeals board and to find that violations of the code exist for air leakage. The motion was seconded by Mr. Brower and passed unanimously.

The Chairman proceeded with the hearing concerning the issue involving Section R703.11 of the IRC. After testimony concluded, the Chairman closed the hearing for deliberation of the issue.

After discussion, Mr. Middleton moved to uphold the building official and City appeals board decisions that the violation in question had been corrected. The motion was seconded by Ms. Monday noting that the decision had no bearing on the new notice of violation issued by the building official after the City appeals board hearing. A vote was taken and the motion passed unanimously.

The Chairman then proceeded with the hearing concerning the issue involving Section R408 of the IRC. During testimony, Mr. Grant withdrew the appeal concerning debris in the crawlspace. After testimony concluded, the Chairman closed the hearing for deliberation of the issue.

After discussion, Mr. Kessler moved to overturn the decision of the building official and City appeals board and reinstate the notice of violation issued for the crawlspace. The motion was seconded by Ms. Monday and passed unanimously.

The hearing was then reopened for consideration of the issue involving Section 109.3 of the Virginia Construction Code (VCC). After testimony concluded, the Chairman closed the hearing for deliberation of the issue.

After discussion, Mr. Brower moved to dismiss the appeal and to vacate the City appeal board's decision since the action was taken through a summons rather than through the VCC. The motion was seconded by Mr. Pharr and passed unanimously.

The hearing was then reopened for consideration of the issue involving Section R403.1.6 of the IRC. After testimony concluded, the Chairman closed the hearing for deliberation of the issue.

New Business  
(continued)

After discussion, Mr. Dawson moved to dismiss the appeal as moot since the subject matter was covered by a new notice of violation issued subsequent to the City appeals board decision. The motion was seconded by Mr. Middleton and passed unanimously.

Appeal of Fairfax County; Appeal No. 17-5:

A hearing convened with the Chairman serving as the presiding officer. The appeal involved a modification request under the VCC by HMS Plumbing LLC to use a cured-in-place liner for a portion of the building drain and sewer for a single family dwelling at 1117 Gatewood Drive in Fairfax County. The Fairfax County Board of Building Code Appeals (County appeals board) overturned the refusal to approve the request by the County building department and the County further appealed to the Review Board.

The following persons were sworn in and given an opportunity to present testimony:

Guy Tomberlin, for Fairfax County  
Richard Grace, for Fairfax County  
Diana Saadoun, for HMS Plumbing LLC  
Phil Hubbard, witness for HMS Plumbing LLC

Also present was:

F. Hayden Coddling, Esq., legal counsel for Fairfax County

No exhibits were submitted to supplement the record.

After testimony concluded, the Chairman closed the hearing for deliberation of the appeal.

After discussion, Mr. Crigler moved to uphold the County appeals board's decision. The motion was seconded by Ms. Monday and a vote was taken. The motion failed. Mr. Dawson then moved to overturn the decision of the County appeals board. That motion was seconded by Mr. Brower and a vote was taken. That motion failed.

After further discussion, Mr. Crigler moved to uphold the County appeals board decision with the stipulation of camera inspection before and after descaling and oversight by a registered design professional. The motion was seconded by Ms. Monday. After additional discussion, Ms. Monday withdrew the second to the motion and Mr. Crigler withdrew the motion. Mr. Kessler then moved to continue

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- New Business (continued)                    the appeal to provide the parties an opportunity to submit what stipulations or conditions they believed were necessary to move forward with the work. That motion was seconded by Mr. Crigler and passed unanimously.
- Secretary's Report                        Mr. Hodge advised Review Board members that the interpretation request in the agenda package concerning locks in Group I-2 occupancies had been withdrawn. No additional business was discussed due to the meeting running so late.
- Adjournment                                The meeting was adjourned by proper motion at approximately 7:30 p.m.

Approved: September 15, 2017

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Chairman, State Building Code Technical Review Board

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Secretary, State Building Code Technical Review Board