

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, April 16, 2021 - 10:00am (Virtual Meeting)

<https://vadhcd.adobeconnect.com/lbbca/>

- I. Roll Call

- II. Petition for Reconsideration (§ 2.2-4023.1. Reconsideration)

 In Re: Patrick and Jean Sartori
 Appeal No. 20-04

- III. Public Comment

- IV. Adjournment

(Page left blank intentionally)

STATE BUILDING CODE TECHNICAL REVIEW BOARD

James R. Dawson, Chair
(Virginia Fire Chiefs Association)

W. Shaun Pharr, Esq., Vice-Chair
(The Apartment and Office Building Association of Metropolitan Washington)

Vince Butler
(Virginia Home Builders Association)

J. Daniel Crigler
(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

Alan D. Givens
(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

David V. Hutchins
(Electrical Contractor)

Christina Jackson
(Commonwealth at large)

Joseph A. Kessler, III
(Associated General Contractors)

Eric Mays
(Virginia Building and Code Officials Association)

Joanne D. Monday
(Virginia Building Owners and Managers Association)

J. Kenneth Payne, Jr., AIA, LEED AP BD+C
(American Institute of Architects Virginia)

Richard C. Witt
(Virginia Building and Code Officials Association)

Aaron Zdinak, PE
(Virginia Society of Professional Engineers)

Vacant
(Commonwealth at large)

(Page left blank intentionally)

Tuesday, March 30, 2021

The Sartoris
9408 Breezewood Ln
Culpeper, VA 22701

State Building Code Technical Review Board
% Travis Luter
600 E. Main Street – Suite 1100
Richmond, VA 23219

Mr. Luter,

I hope all is well

I have attached my letter for reconsideration.

If this is not acceptable, please let me know.

Sincerely,

patrick sartori

Letter of Reconsideration

Every sentence without a question mark (?) is a direct reference in an email or document that I am in possession of. There are some instances where there is no doubt, or it falls into what is customary and or reasonable. *Italicized words are a direct cut and pasted from the original document and or email, some may have quotations. Some areas are highlighted or underlined for emphasis.*

When it says “the builder” its general terminology. Graystone, the builder and Mr. Clatterbuck are the same. CA is the Culpeper County Attorney, Ms. Alexis, CBO is the building official Bob Orr.

I have over nearly 1000 emails to the builder and building department with regard to the building code violations:

- a. Expansive soil backfill, which has been replaced by the builder with #57 gravel backfill,
- b. drain tile replacement, it was installed initially on dirt,
- c. wrong PSI for the garage slab,
- d. basement slab not code, too thin,
- e. improper grading,
- f. improper damp proofing,
- g. building on soil that will not support the foundation(Expansive soil),
- h. backfill to high

No contractual language between an homeowner and contractor permits the contractor to build outside of the USBC.

It is my understanding CBO’s undergo training on how to determine who the responsible party is, to do so one must determine who did the work.

No one has contested the builder did all the work to construct the house. He is the one who applied for the permit to construct and the sole entity that constructed on soil that will not support the foundation.

The builder conceded he was responsible for the expansive soil violation when he removed the expansive soil backfill and replaced it with #57 gravel starting in Oct 2019. He conceded the soil was his responsibility again in April 2020 when he removed the expansive soil backfill from property.

He has since changed his mind.

The USBC does not address contractual issues. It is intended to ensure the construction meets the minimum standard.

115.1 Violation a misdemeanor; civil penalty. In accordance with Section 36-106 of the Code of Virginia, it shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any code provisions, to violate any such provisions. Any locality may adopt an ordinance that establishes a uniform schedule of civil penalties for violations of specified provisions of the code that are not abated or remedied promptly after receipt of a notice of violation from the local enforcement officer.

The Sartoris did not violate the code. No one has contested this fact.

115.2 Notice of violation. The building official shall issue a written notice of violation to the responsible party if any violations of this code or any directives or orders of the building official have not been corrected or complied with in a reasonable time. The notice shall reference the code section upon which the notice is based and direct the dis-continuance and abatement of the violation or the compliance with such directive or order. The notice shall be is-sued by either delivering a copy to the responsible party by mail to the last known address or delivering the notice in person or by leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place if the person in charge of the premises can-not be found. The notice of violation shall indicate the right of appeal by referencing the appeals section. When the owner of the building or structure, or the permit holder for the construction in question, or the tenants of such building or structure, are not the responsible party to whom the notice of violation is issued, then a copy of the notice shall also be delivered to such owner, permit holder or tenants.

The Sartoris did not violate the code, therefore they are not the responsible party.

Who is the responsible party for constructing the Sartoris house on expansive soil? That would be the person who did the work.

In this case the Sartoris did not perform the work that caused the violation. There is no contesting of this fact by the builder, the CBO or the CA. All parties acknowledge Graystone Homes performed the work.

“In response to your question regarding the soils, when building plans start the review process we check the Shrink-Swell Soils map for location to see if the soils are possibly suspect, if it is, we require a soils evaluation during the review process as this could impact footing design, foundation drainage and backfill material.

Your lot showed no such indication. Second check is during the footing inspection, whether in house or third party inspector, if suspect soil is discovered, the inspection would automatically fail the inspection and a soil report would be required and the footing/foundation design would need to be re-evaluated.

Attached is the entire inspection history for your house, SCI is one of our approved Third party Inspection agencies which performed the footing and slab inspections. Due to the condition of the soils in the excavated areas there was no need to perform any more than a probe test for bearing capacity to assure it met the minimum assumed 2000 psf.”

*Hope this helps clarify the process.
Let me know if you have any questions.*

*Respectfully,
Bob Orr*

(According to NRCS the map information is not site specific and does not eliminate the need for onsite investigation of the soils or for testing and analysis by personnel experienced in the design and construction of engineering works.)

The fact the soil was evaluated is affirmed by the builder during foundation construction. He made this statement, *“we encountered no shrink-swell soil during foundation construction.”* He said this 6 months before the soil test established the soil at the footer level is expansive.

The builder has decades of construction in the county. Surely, he is familiar with expansive soils or is he relying on other information to confirm the soil. The builder did make the comment, *“if I had shrink-swell soil, I could not have a conventional septic system.”* Was he assuming this fact substantiated no expansive soil?

There was no reason to suspect the presence of problem soil on your property. Is another of the builder’s statements. The soil is 92% clay with visible mica. This does not make it expansive, but it does make it questionable. This is what the builder missed and didn’t use due diligence in verifying the soil was suitable to support the foundation.

According to the builder’s contract to construct: *he shall supervise and direct the work. He shall be responsible for all construction means, methods, techniques, sequence and procedure and for coordination of all portions of the work.* This makes the builder solely responsible for all work done, which would include any inspections.

The Culpeper County Attorney (CA) stated during the review board, she knows there are cases, as in the instant case of the Sartoris, where the homeowner having contracted a Class A licensed contractor to construct their home and the contractor who performed all the work to construct is absolved of code violations and the homeowner is always the responsible party.

Additionally, the CA stated this 2/10/21

I share with you anecdotal information from Building Department staff that the County often issues building department notices of violation to owners, and even in instances (more limited) – beyond your event/matter - where a business entity/contractor has been involved.

As has always been acknowledged, when a contractor is involved, the owner might not also be cited, but given the unique facts in your event/matter, it is included in one of those limited instances where an owner is cited as well - in prudence and for other due process considerations meant to be equitable to you and the contractor.

Lastly, as legal counsel, I do not testify.

I proffered facts on behalf of Mr. Orr, which he confirmed were true and accurate, and I otherwise engaged in oral argument and advocacy.

The argument that an owner is always a responsible party is my legal interpretation of the Code, applicable law - both binding and persuasive, and the Attorney General's opinion (attached) as cited at the hearing – collectively.

Please note: I have no specific recollection of a case file number or case name from my 17 years of practice.

I just know, generally, that owners are cited in this jurisdiction and those around the nation.

Thank you for your civic inquiry, always.

*Sincerest regards,
Bobbi Jo*

ALWAYS defined; invariably, forever, at all times.

The owner is always the responsible party and there are known cases is claimed, and then a contradiction is noted and states she has no recollection of any specific cases.

Using the CA's interpretation, the homeowner is always the responsible party then; What happens when the homeowner is issued a notice of violation (NOV) and contracts a contractor to make the repairs, and that contractor fails to correct the violation?

Then, the homeowner hires a 3rd contractor to correct the same issue and again the contractor fails to satisfy the code. Subsequently, the homeowner then sells the house. Does the NOV transfer to the new homeowner?

This scenario could enter into a perpetual state of repetitiveness and the NOV would never be corrected. Is this the intent of the USBC?

Spring 2019: Initially, the County Attorney, Ms. Alexis stated if the soil proved to be expansive, it would be another deficiency for the contractor.

Dear Mr. Sartori,

My investigation into the several matters you have raised to the Building Official (as to his Office's actions) in your various exchanges with him should not (i) be an impediment as to how you decide you will resolve the issues you have with your builder/contractor to remedy any defects you identify with your home or (ii) be an impediment to your contracting with a new builder/contractor to remedy any defects you identify with your home. That is a private civil matter.

At present, the pressing issue for the Building Official is that a code deficiency has been identified by you, which has in turn been affirmed by him, related to concrete work and grading (in limited part). The Building Official has notified your contractor of the code deficiency. That code deficiency must be remedied by your contractor or you in the timeframe the Building Official has stated. You all should be receiving letters within the next couple of workdays from the Building Official. It is a matter of your preference whether you let the previous builder/contractor remedy the concrete and grading issues, or hire a new business to do so.

I understand that aside from the concrete and grading issues, you have now identified what you believe to be another deficiency, namely suspect soil. I appreciate that you have taken a sample near your foundation, submitted it for testing, and that an engineer's report indicates that the sample is classified as expansive soil. In light of this discovery, at this point, the Building Official will need further independent confirmation by a certified engineer that multiple samples from various points at the house location confirm the severity of the shrink-swell condition present in the area of the footing. You and/or your contractor are responsible for that engineering, depending on your contract with each other.

If it is determined that the soil cannot support the foundation that would be a another code deficiency. If that were in fact to be the case, your contractor would receive further notice as to this code deficiency. *Again, it would be a matter of your preference as to how you decide you would resolve the soil/foundation issue ...whether you have your builder/contractor to remedy the defect or you contracting with a new builder/contractor to remedy the defect. If this newly alleged code deficiency is sufficiently established, the Building Official's role is to issue the notice and make certain its remedied – or pull the certificate of occupancy. Aside from the Building Official's role, you might maintain a private right of action against your builder.*

I do at this time want to try to address the issues you raise with regard to inspections. With regard to the pre-pour concrete inspection, your contractor chose for it to be performed by a certified and approved third party inspector, instead of the Building Department staff. This is the industry norm and is permitted and facilitated under the Uniform Statewide Building Code (USBC). As for the grading, no grading defects were initially identified by the Building Department, which did perform that review. As you know, after time to compact, there can be changes in the grading immediately next to the house soon after construction. When a grading issue was later reported, the Building Department inspected and at its follow up inspection (after the contractor attempted to fix it) the Building Department identified a small area at the rear of the home that still does need re-grading.

Lastly, with regard to your allegation of suspect soil, please know that your lot is not located in a shrink-swell soil designated area indicated on the Commonwealth's soil map, as used by Building Department staff during plan review. As such, no heightened scrutiny or process through the Building Official's Office is triggered under the USBC and/or other state law at the time of plan review. Otherwise, shrink-swell soil as you know cannot be identified by mere visual inspection. It is only at this time that you bring forth some evidence (contrary to the map indicators) that is may be present at your location that it becomes a matter for the Building Official to look into...again, in light of this discovery, at this point, the Building Official will need further independent confirmation by a certified engineer that multiple samples from various points at the house location confirm the severity of the shrink-swell condition present in the area of the footing. You and/or your contractor are responsible for that engineering, depending on your contract with each other.

In sum, I fully support and stand behind the actions of the Building Department.

I hope this email provides clarity. I hope you are able to work things out with your previous contractor or otherwise find a new team that is a better fit for you. Thanks and take care.

*Sincerest regards,
Bobbi Jo*

*Bobbi Jo Alexis, VSB#67902
County Attorney
Office of the County Attorney
for Culpeper County
306 N. Main Street
Culpeper, Virginia 22701
(540)727-3407 telephone
(540)727-3462 facsimil*

Keep in mind the other NOV's issued to solely to Graystone Homes, the only one appealed by Graystone was the test procedures used for expansive soil/R403.1.8, violation. The review board ruled the soil is expansive and the test procedures were accurate. (Sept. 2020) Graystone Homes did not appeal the board's ruling.

I can find no cases in Virginia, that hold the homeowner responsible for any code violations unless the home owner did the work.

I did a FOIA request the state and the counties where the CA previously worked. In Culpeper and Prince William County there are no cases. The CA stated this in the email highlighted in yellow above. The Prince William County response is attached.

Additionally, resources from other states

The Appellate Division decision ruled that once the Certificate of Occupancy had been issued, the municipality had relinquished its authority and jurisdiction to pursue the developer for any subsequently discovered code violations in the homes. On June 24, 2005, the Supreme Court of the State of New Jersey reversed the Appellate Division's decision and specifically found that the Department of Community Affairs, and through it the municipal code officials retained authority and jurisdiction to investigate alleged code violations and to issue Notices of Violation to the developer/builder.

Specifically, the Supreme Court found that the state adoption of the Uniform Construction Code was "remedial" legislation and that the Department of Community Affairs and the municipal code officials were not limited by the issuance of a Certificate of Occupancy in their enforcement of the Code. While this does not open up non-code issues, it does place a builder/developer at risk for a period long after it may have transferred title to a particular house or completed a particular development.

Builders should be further aware that the ability of a dissatisfied homeowner to seek involvement by the municipality reviewing alleged code violations transcends any limitation of warranty provisions that may exist in the contract for sale; transcends the New Home Warranty Act and is separate and distinct from any limitations that may have been built into the contract with the Buyer pertaining to arbitration of disputes.

The municipality has the authority, separate and apart from any such limited ability that the Homeowner may have, to investigate and to issue Notices of Violation which may require return work, fines and other sanctions against a developer for discovered code violations. The municipality need not pursue such issues through contractual arbitration or the Home Warranty Program which are usually built into the construction contract. The municipality is not limited to the "performance standards" adopted by the Home Warranty Program. The municipality is not necessarily restricted by any statute of limitations that might otherwise apply to a dispute between a Homeowner and the Contractor.

The availability of municipal code enforcement potential is an extremely attractive aspect for the dissatisfied homeowner since it transcends all of the contractual limitations and can be pursued without legal costs and expense on the part of the homeowner. The fact that code officials made inspections and signed off on inspections throughout the course of construction and signed off on the Certificate of Occupancy does not constitute an absolute defense to the developer/builder where a further review at some later date by the code officials results in the finding of a violation.

There are no known cases to indicate the Sartoris are the responsible party. No data, no court decisions, no legal cites, no examples.

It was mentioned in the notes of the meeting we did not want the builder to do the repairs. This **was** our position, until we were told the CBO cannot force the builder to pay another contractor to complete the repairs. Since then, the builder has been at our property for months completing some of the other code violations. We fully intend to allow the builder to complete the repairs for the violations as identified by the CBO.

The building code is law. No one can violate the law and make another responsible for their actions.

If a contract to construct by the owner is outside of the code, the contractor has the obligation and duty to refuse the work, because it violates the law. The code is clear and no contractual language can waive a contractors requirement to construct within the requirements of the code.

In a previous case resolved by the board the answer would be no. see case 12-7, attached

The county has presented no evidence to substantiate their claim. No evidence of historical cases the claimed to exist can be found. In this case the Sartoris did not perform the work that caused the violation. There is no contesting of this fact by the builder, the CBO or the CA. All parties acknowledge Graystone Homes performed the work.

Graystone Homes solely the responsible party in accordance with the USBC, for constructing on expansive soil. When a contractor performs the defective work, they are the responsible party.

Please consider this information and remove the violation from the Sartoris and affirm the Builder, Graystone Homes Inc is solely responsible for constructing on expansive soil and responsible to mitigate the violation.

Sincerely,

The Sartoris

From: Sparkes, Kimberly S. KSparkes@pwcgov.org
Subject: RE: FOIA Request - Code Violations Property (Sartori)
Date: February 15, 2021 at 14:30
To: patsartori@msn.com
Cc: Bates, Amanda ABates@pwcgov.org, Skoff, Robert P. rskoff@pwcgov.org



Mr. Sartori,

Please allow this correspondence to serve as the County's response to your FOIA Request.

I was not able to locate any records responsive to your request. Should you have any additional requests for a specific record, please let us know.

Thank you.

With best regards,

FOIA Officer
Prince William County Attorney's Office
1 County Complex Court
Prince William, VA 22192-9201
Phone: (703) 792-6620
Facsimile: (703) 792-6633

From: Sparkes, Kimberly S. <KSparkes@pwcgov.org>
Sent: Monday, February 1, 2021 11:03 AM
To: Patrick S <patsartori@msn.com>
Cc: Bates, Amanda <ABates@pwcgov.org>; Skoff, Robert P. <rskoff@pwcgov.org>
Subject: RE: FOIA Request - Code Violations Property Unknown (Sartori)

Mr. Sartori,

You have reached our FOIA Department.

However, the Virginia Freedom of Information Act provides citizens of the Commonwealth of Virginia access to public records in the possession of a public body. Pursuant to the Virginia Freedom of Information Act § 3700(B) and 3704(A), prior to producing records to the public we must ensure that the requestor is a citizen of the Commonwealth of Virginia. **Please confirm that you are a Virginia citizen by providing your local, physical address and current contact information so that we may move forward with processing your FOIA request.**

In *McBurney v. Young*, the U.S. Supreme Court ruled that Virginia FOIA's limitation on out-of-state requests (i.e., requests from out of state do not have to be honored) is constitutional. Therefore, if you are not a Virginia citizen, FOIA does not apply to your request.

Once we receive confirmation, we will determine whether, (1) responsive records exist, (2) any charges apply, and (3) whether any records are exempt. We appreciate your time and consideration.

With Best Regards

Kimberly Sparkes

FOIA Officer *for* PWC
Prince William County Attorney's Office
1 County Complex Court, Suite 240
Prince William, VA 22192-9201
Phone: (703) 792-6620
Facsimile: (703) 792-6633
Email: KSparkes@pwcgov.com

From: Patrick S <patsartori@msn.com>
Sent: Saturday, January 30, 2021 6:47 AM
To: Sparkes, Kimberly S. <KSparkes@pwcgov.org>; Skoff, Robert P. <rskoff@pwcgov.org>; FOIA Inbox <FOIAOfficer@pwcgov.org>
Subject: FOIA Request

This email is from an EXTERNAL source. Use caution when replying or clicking embedded links.

Good Morning,

I don't know if this is the correct location for this request, if so great, if not can you please advise who the FOIA contact person is.

My request

I hope all is well.

I would like to request documents and or records, if available, of Prince William County building department charging the homeowner as the responsible party with regard to code violations.

It can be specific to: the homeowner having **not applied** for the permit under the exception, the properly licensed contractor applied for the permit and did the work.

Additionally, any document or record which addresses a building contract superseding or interfering with the building code.

Thank you and stay safe
patrick sartori

please forgive the shotgun email.....thx

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Fairfax County
Appeal No. 12-7

Hearing Date: May 17, 2013

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

In September of 2008, Mehdi and Marylynn Aminrazavi, owners of property in Lorton, Virginia, in Fairfax County, contracted with Metropolitan Investment Group, LLC and its president, David Guglielmi, to construct a new house for the Aminrazavis at 6061 River Drive.

The contract required the Aminrazavis to obtain the building permit to construct the house from the Fairfax County Department of Public Works and Environmental Services (County building department), which they did in April of 2009.

Guglielmi then had the house constructed utilizing various subcontractors and the final inspection and certificate of occupancy approved by the County building department under the 2006 edition of Part I of the Virginia Uniform Statewide Building Code, known as the Virginia Construction Code, or VCC, in May of 2010.

In November of 2011, in response to a complaint from the Aminrazavis, a representative of the County building department re-inspected the house and discovered a number of violations of the VCC. A corrective work order under the VCC was issued to Guglielmi in December of 2011 and after the time period for correcting the violations had expired, a notice of violation under the VCC was issued to Guglielmi in April of 2012.

Guglielmi appealed the notice of violation to the County of Fairfax Board of Building Code Appeals (County appeals board), which heard his appeal in August of 2012 and ruled that Guglielmi was not responsible for the VCC violations since the

Aminrazavis obtained the VCC building permit and Guglielmi was not qualified to obtain the permit¹.

The County building department then appealed the decision of the County appeals board to the Review Board.

Review Board staff conducted an informal fact-finding conference in November of 2012, attended by the Aminrazavis, Guglielmi and representatives of the County building department. The facts and issues in the appeal were summarized in a document drafted by Review Board staff and distributed to the parties. Opportunity was given for the submittal of corrections, additions or objections to the staff document and the submittal of additional documents and written arguments and a hearing before the Review Board was scheduled.

III. FINDINGS OF THE REVIEW BOARD

With respect to the issue of whether the County appeals erred in overturning the County building department's decision to issue the VCC notice of violation to Guglielmi, the Review Board finds that Guglielmi would be the responsible party under the VCC for any cited violations determined to be valid citations and that the County building department was correct in

¹While the County appeals board did not specify why Guglielmi was not qualified to obtain the permit, testimony at the hearing before the Review Board indicated that Guglielmi was only licensed as a Class C contractor at the time the contract was signed. At the time of the hearing before the Review Board, Guglielmi had obtained a Class A contractor's license.

issuing the notice of violation to Guglielmi, for the following reasons.

VCC Section 115.1² establishes that it is unlawful for any owner or any other person, firm or corporation, to violate any provision of the VCC. Section 115.2 requires a VCC notice of violation to be issued to the party responsible for the violation.

The violations cited by the County building department are for what the County building department determined to be incorrect construction of various parts of the Aminrazavis' house. Guglielmi contracted with the Aminrazavis to construct the house and did so through the use of subcontractors. The Aminrazavis obtained the VCC building permit in their name only due to a provision in the contract with Guglielmi. There was no evidence that the Aminrazavis were, or were ever intended to be, involved in the actual construction of the house. Therefore, it is Guglielmi, rather than the Aminrazavis, that would be responsible for any violations of the VCC relating to how the house was constructed.

² While the Aminrazavis' house was constructed under the 2006 edition of the VCC, the Review Board has previously ruled that administrative actions are subject to edition of the VCC in effect when such administrative actions take place. In this case, the administrative provisions of the 2009 edition of the VCC are applicable.

With respect to the merits of each cited violation issued by the County building department³, the Review Board finds as follows:

Violation 1: Fireblocking - The house was constructed with a large vertical chase allegedly for the future installation of a dumbwaiter. However, as constructed, it creates a violation of Section R602.8 of the International Residential Code (IRC), the nationally recognized model code incorporated by reference in the VCC to provide the technical requirements for the construction of houses. Section R602.8 prohibits concealed draft openings between stories and between the top story and the roof space.

Violation 2: Mounting of Electrical Equipment - There was at least one electrical outlet box in the attic which was not fastened to any support. This is a violation of Section E3304.7 of the IRC which requires electrical equipment to be firmly secured to the surface on which it is mounted.

Violation 3: Support Spacing - There were electrical wires in the attic without proper support in violation of Table 3702.1 of the IRC.

Violation 4: Corrugated Stainless Steel Tubing (CSST) Support - The gas piping in the attic connecting to the furnace was unsupported in violation of Section G2418.2 of the IRC.

Violation 5: Covers and Canopies - Guglielmi stipulated agreement during the hearing that electrical outlet boxes in the attic did not have cover plates in violation of Section E3806.9 of the IRC.

Violation 6: Continuity of Handrails (interior) - The handrail on the stairs from the front door area to the great room did not extend to a point above the top riser of the stairs creating a violation of Section R311.5.6.2 of the IRC.

Violation 7: Handrails (exterior) - There was no handrail on the exterior main entrance stairs in violation of Section R311.5.6 of the IRC.

³ The cited violations are enumerated in accordance with the April 27, 2012 notice of violation issued by the County building department, as revised February 4, 2013.

Violation 8: Exposed Installation Facing - The title of this violation on the County building department's notice of violation was incorrectly worded as "Installation" rather than "Insulation;" however, the description of the violation provided in the notice of violation was sufficiently clear. Guglielmi stipulated agreement during the hearing that the paper facing on the insulation in the lower level utility room was exposed in violation of Section R316.1 of the IRC.


Violation 9: Improper Fasteners in Deck - The testimony and evidence submitted was conclusive that the fasteners used on the exterior deck and stairs were not corrosion-resistant as required by Section R319.3 of the IRC.

Violation 10: Deck Beam Bearing - The deck beams were not properly supported and anchored as required by Sections R501.2 and R404.1.5.1(5) of the IRC.

Violations 11, 12 and 13 - These violations were withdrawn by the County building department prior to or during the hearing; therefore, no ruling is necessary concerning them.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the County appeal board to be, and hereby is, overturned and the notice of violation issued by the County building department for violations numbered one through ten to be, and hereby is, upheld.



Chairman, State Technical Review Board

Sept. 20, 2013
Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

Documents Provided by Staff

1. Other Prior Review Board Decisions
2. Law Pertaining to Reconsiderations
3. AG Opinion Related to the Request

(Page left blank intentionally)

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Charlie FitzGerald (CMC
Construction) (corrected)
Appeal No. 00-6

Decided: August 18, 2000

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board ("Review Board") is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code ("USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia and § 103.1 of the USBC. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia and § 121.1 of the USBC. The Review Board's proceedings are governed by the Virginia Administrative Process

Act. See Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia.

II. CASE HISTORY

In January, 2000, an inspection under the USBC was conducted by the Fairfax County Department of Public Works and Environmental Services, Office of Building Code Services ("code official") relative to a construction project at 1134 Springvale Road in Great Falls. The construction project consisted of work including an addition and sunroom to a house owned by Mark and Mary Kissman.

As a result of the inspection, on March 9, 2000, the code official issued seven USBC notices of violation ("notices") to Charlie J. Fitzgerald, DBA, CMC Construction. An appeal of the notices was filed by Charles FitzGerald, representing CMC Construction LLC, on March 16, 2000 to the Fairfax County Board of Building Code Appeals ("County appeals board"). The County appeals board heard the appeal and ruled to uphold the issuance of the notices by order dated April 12, 2000.

A second appeal was filed by Charlie FitzGerald representing CMC Construction l.l.C.[sic] to the County appeals board by application dated April 14, 2000. The application indicated the appeal was to request the County appeals board to rule on whether to overturn the code official's decision that

CMC Construction was responsible for abating the violations cited in the notices.

An appeal to the Review Board was filed by application dated May 2, 2000. The appellant information on the Review Board's application form is "CMC Construction L.L.C. (703) 523 1170 [/] 1213 Ellison Street, FC - Va 22046 [.]"

The County appeals board conducted a hearing pursuant to the second appeal and ruled to deny the appeal by order dated May 10, 2000.

Review Board staff conducted an informal fact-finding conference pursuant to the appeal filed to the Review Board on June 29, 2000. The conference was attended by Charlie Fitzgerald and counsel, the code official and Mary Kissman and counsel. The issue of the second appeal to the County appeals board was discussed at the conference and it was agreed that the second ruling of the County appeals board does not limit or affect the appeal filed to the Review Board.

The following issues for resolution by the Review Board were established at the conference:

- (1) To hear preliminarily, whether to dismiss the appeal due to issues of standing; and if ruling in the negative,
- (2) Whether to overturn the citing of the notices in relation to whether the responsible proper party was cited; and if ruling in the negative,

(3) Whether to overturn the citing of any or all of the notices on the technical or construction aspect basis in consideration of each separately as follows:

- Notice #1 - Section 401.3 Drainage
- Notice #2 - Section 409.1 Ventilation
- Notice #3 - Section 409.2 Access
- Notice #4 - Section 409.3 Removal of debris
- Notice #5 - Section 502.4 Bearing
- Notice #6 - Section 604.13 Beam supports
- Notice #7 - Section 703.8 Flashing

At the hearing before the Review Board the code official indicated an inspection of the project had taken place subsequent to the informal fact-finding conference and several of the cited violations had been corrected. Based on the code official's stipulation, Notice #2 was determined not to include the installation of a vapor barrier and Notices #4, #5 and #6 were removed from the list of issues to be resolved by the Review Board.

III. FINDINGS OF THE REVIEW BOARD

Jurisdictional Issue #1 - Whether to dismiss the appeal due to issues of standing.

The Kissmans' question standing and argue the appeal to the County appeals board and to the Review Board was filed by CMC Construction, L.L.C., a corporation, and not Charlie FitzGerald or CMC Construction, a sole proprietorship, to whom the violations were cited by the code official.

FitzGerald states he changed CMC Construction Company from a sole proprietorship to a corporation subsequent to obtaining the permits for the Kissmans' job but prior to filing the appeals and that he inadvertently used the corporate name along with his own name on the appeal applications. FitzGerald argues however that since the applications were signed by him, the use of the corporate name is harmless error.

The Review Board finds the appeal to the County appeals board to have been properly perfected since the violations were issued to Charlie FitzGerald by the code official and Charlie FitzGerald signed the appeal application to the County appeals board as the submitter. Likewise, the Review Board finds FitzGerald's appeal to the Review Board proper since FitzGerald signed and listed his name as the applicant. Accordingly, the Review Board declines to dismiss the appeal due to standing and notes a correction to the styling of the appeal before it to be "Appeal of Charlie FitzGerald (CMC Construction), Appeal No. 00-6."

Jurisdictional Issue #2 - Whether to overturn the issuance of the notices in relation to whether the responsible property party was cited.

FitzGerald argues the contract with the Kissmans was terminated prior to the completion of the job and any violations present were not caused by CMC Construction.

The Review Board finds the evidence insufficient to summarily overturn the issuance of the notices on the basis of FitzGerald not being the proper responsible party. The parties were directed to include any further arguments relative to this issue in the presentation of evidence on each technical issue for resolution by the Review Board.

Technical Issue #1 - Whether to overturn the issuance of the notice for lack of proper drainage (USBC § 401.3).

FitzGerald argues the slope of grade away from the house in the areas cited by the code official meets the slope required by the USBC. FitzGerald attributes the standing water in the pictures submitted by the code official to be the result of the blockage of a drain adjacent to the garage and other factors and FitzGerald submits pictures showing measurements of the slope.

The Review Board finds § 401.3 of the USBC requires the slope of the grade to fall a minimum of six inches within the first ten feet. The measurements shown by FitzGerald are using a tape measure to establish the distance from the top of the porch floor to the grade around the porch floor. No level string line was used to establish the fall of the grade within the first ten feet away from the house. In addition, the sidewalk along the sunroom is higher than the adjacent grade towards the house which prevents surface water from draining away from the house. Moreover, the photographs clearly show the

grading of the lot to be highest at the driveway and to slope towards and around the two-story addition. Consequently, any slope of the grade adjacent to the front of the two story addition is lateral towards the end of the two-story addition and not perpendicular to the front of the two-story addition. The USBC requirement stating, "[t]he grade away from foundation walls shall fall a minimum . . .," requires the slope of the grade to be perpendicular to the exterior wall, not parallel to it.

No substantial argument was made by FitzGerald that he was not responsible for the grading, or that someone else did the grading.

Therefore, the Review Board finds the code official was correct to cite the USBC violation. However, the issuance of a USBC notice of violation by the code official without first notifying FitzGerald of the violation in writing and allowing FitzGerald a reasonable time to remedy the violation is contrary to applicable USBC provisions. Section 113.2, addressing inspections under the USBC, states in pertinent part, "A record of all such examinations and inspections and of all violations of this code shall be maintained by the code official and shall be communicated promptly in writing to the permit holder, person in charge of the work or other appropriate person." Section 116.2, addressing the USBC notice of violation, states in pertinent part, "The code official shall serve a notice of

violation to the responsible party ... if the violation has not been remedied within a reasonable time." Therefore, when the code official discovered the violation, a correction order or a notice of defective work pursuant to § 113.2 should have been issued rather than the USBC notice of violation.

We therefore rule to uphold the citing of the violation but change the notice of violation to a notice of defective work. The time frame for correction of the violation was not appealed by FitzGerald.

Technical Issue #2 - Whether to overturn the issuance of the notice for crawlspace ventilation and access (USBC §§ 409.1 and 409.2).

FitzGerald states the area under the sunroom is not a crawlspace and is not subject to the USBC requirements for access or ventilation. In addition, FitzGerald states the floor joists are of pressure-treated wood and there are no mechanical devices in the under-floor area. No substantial argument was made by FitzGerald that he was not responsible for the construction of the sunroom.

USBC §§ 409.1 and 409.2 state in pertinent part: "The space between the bottom of the floor joists and the earth under any building (except such space as is occupied by a basement or cellar) shall be provided with ventilation openings through foundation walls or exterior walls.," and "An access crawl hole

18 inches by 24 inches shall be provided to the under-floor space."

Testimony established there to be an under-floor space ranging from one foot to two feet in height under the sunroom floor. FitzGerald installed one vent in the front foundation wall. The Review Board finds the above-stated provisions to clearly require both ventilation and access.

We therefore rule to uphold the code official's citing of the violations. However, for the reasons stated under the first technical issue for resolution, the notice of violation is changed to a notice of defective work. The time frame for correction of the violation was not appealed by FitzGerald.

Technical Issue #3 - Whether to overturn the issuance of the notice for lack of flashing where the wood siding meets the stone veneer (USBC § 703.8).

FitzGerald states the stone veneer forming the wall covering on the lower half of the outside walls is embedded in a mortar base over metal lath and sealed at the top edge with a stone coping and with caulking and therefore meets the requirements of the USBC. No substantial argument was made by FitzGerald that he was not responsible for the installation of the stone veneer.

USBC Table 703.4 establishes the requirements for the installation of stone veneer and subjects stone veneer to the

same USBC requirements for the installation of brick and concrete masonry veneer. Section 703.7.3 specifically addresses flashing and states in pertinent part: "Flashing shall be located ... and at other points of support, including structural floors, shelf angles, and lintels See § 703.8 for additional requirements." Section 703.8 states in pertinent part: "Similar flashings shall be installed at the intersection of chimneys or other masonry construction with frame or stucco walls, with projecting lips on both sides under stucco copings; under and at the ends of masonry, wood or metal copings and sills"

The Review Board finds the top of the stone veneer to be a point of support requiring flashing under § 703.7.3. In addition, the juncture of the stone veneer with the siding above is an intersection of masonry construction with a frame wall under § 703.8. Flashing is therefore required to be installed. We rule to uphold the code official's citing of the violation. However, for the reasons stated under the first technical issue for resolution, the notice of violation is changed to a notice of defective work. The time frame for correction of the violation was not appealed by FitzGerald.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decisions of the code official and County appeals board to be, and hereby are, upheld as outlined the Findings of the Review Board section of this Decision.

The appeal is denied.


Vice-Chairman, State Technical Review Board

Sept 15, 2000
Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the State Building Code Technical Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Capital Investments, LLC
Appeal No. 10-12

Hearing Date: November 19, 2010

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code (USBC) and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

The appeal involves an existing home located at 7001 Catlett Street, in Springfield.

In March of 2010, the Fairfax County Enhanced Code Enforcement Strike Team (County USBC department) issued a legal notice/corrective work order (notice) to Capital Investments, LLC (Capital) for conducting renovation work in the home without first obtaining a USBC permit and additionally for failure to obtain the required USBC inspections during and after completion of the work.

Capital owned the home from September of 2009 through December of 2009, when it was sold to its current owner.

Capital appealed the notice to the Fairfax County Board of Building Code Appeals (County appeals board), which conducted a hearing in June of 2010, and ruled to uphold the order.

During the hearing before the County appeals board, there was discussion that the notice only specified that interior alterations were completed throughout the home without stating specifically what work was done. Subsequent to the hearing by the County appeals board, the County USBC department clarified by letter that the work in question was the construction of a new basement bedroom and the construction of a pass through in the kitchen.

Capital further appealed to the Review Board in July of 2010.

A hearing was held before the Review Board in November of 2010 and was attended by Capital¹ and representatives of the County USBC department.

III. FINDINGS OF THE REVIEW BOARD

Capital argues that there is no substantial evidence that the work in question was done when it owned the home and therefore the notice should not have been issued to Capital, or alternatively, the notice should have been issued to the current owner.

The County USBC department argues that an affidavit from a neighbor identifying when the work in question was done and realtor listings indicating an increase in the number of bedrooms evidence that Capital was the responsible party.

The Review Board finds that Capital did not produce any company records, pictures or other evidence substantiating that the work in question was either done prior to, or subsequent to, Capital's ownership of the home. In addition, the affidavit of the neighbor indicated that the work took place during the time in which Capital owned the home. Further, the realtor listings

¹Capital's legal counsel was present at the Review Board hearing and provided testimony for Capital and a construction expert witness testified for Capital; however, no employees of Capital provided testimony.

showed an increase in the number of bedrooms from prior to Capital's ownership to after its ownership.


Capital submitted an additional affidavit from a realtor which stated that the realtor previewed the home within a day or two after Capital took possession and that the basement was completely finished and the pass through to the kitchen was already present. The affidavit did not provide the date that the realtor previewed the home.

The record indicates that Capital acquired the home on September 9, 2009, but did not record the deed until September 25, 2009.

The Review Board finds that the two affidavits do not necessarily conflict with each other. The affidavit from the neighbor states that the owners of the home prior to Capital purchasing it had their tenants move out and the home sat vacant for a period of time prior to the neighbor witnessing the construction work. As Capital acquired the home more than two weeks prior to recording the deed, the preview of the home by the realtor submitting the additional affidavit may not have occurred until a day or two after the date of recordation, which would have been ample time for Capital to have completed the work in question.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the notice, as amended by the County USBC department's June 23, 2010 letter, to be, and hereby is, upheld.



Chairman, State Technical Review Board



Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

§ 2.2-4023.1. Reconsideration

A. A party may file a petition for reconsideration of an agency's final decision made pursuant to § 2.2-4020. The petition shall be filed with the agency not later than 15 days after service of the final decision and shall state the specific grounds on which relief is requested. The petition shall contain a full and clear statement of the facts pertaining to the reasons for reconsideration, the grounds in support thereof, and a statement of the relief desired. A timely filed petition for reconsideration shall not suspend the execution of the agency decision nor toll the time for filing a notice of appeal under Rule 2A:2 of the Rules of Supreme Court of Virginia, unless the agency provides for suspension of its decision when it grants a petition for reconsideration. The failure to file a petition for reconsideration shall not constitute a failure to exhaust all administrative remedies.

B. The agency shall render a written decision on a party's timely petition for reconsideration within 30 days from receipt of the petition for reconsideration. Such decision shall (i) deny the petition, (ii) modify the case decision, or (iii) vacate the case decision and set a new hearing for further proceedings. The agency shall state the reasons for its action.

C. If reconsideration is sought for the decision of a policy-making board of an agency, such board may (i) consider the petition for reconsideration at its next regularly scheduled meeting; (ii) schedule a special meeting to consider and decide upon the petition within 30 days of receipt; or (iii) notwithstanding any other provision of law, delegate authority to consider the petition to either the board chairman, a subcommittee of the board, or the director of the agency that provides administrative support to the board, in which case a decision on the reconsideration shall be rendered within 30 days of receipt of the petition by the board.

D. Denial of a petition for reconsideration shall not constitute a separate case decision and shall not on its own merits be subject to judicial review. It may, however, be considered by a reviewing court as part of any judicial review of the case decision itself.

E. The agency may reconsider its final decision on its own initiative for good cause within 30 days of the date of the final decision. An agency may develop procedures for reconsideration of its final decisions on its own initiative.

F. Notwithstanding the provisions of this section, (i) any agency may promulgate regulations that specify the scope of evidence that may be considered by such agency in support of any petition for reconsideration and (ii) any agency that has statutory authority for reconsideration in its basic law may respond to requests in accordance with such law.

2016, c. 694.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

1978-79 Va. Op. Atty. Gen. 292 (Va.A.G.), 1978-79 Va. Rep. Atty. Gen. 292, 1978 WL 25496

Office of the Attorney General

Commonwealth of Virginia
December 14, 1978

***1 UNIFORM STATEWIDE BUILDING CODE. PENALTY FOR VIOLATION OF PROVISIONS. PENALTIES MAY BE ASSESSED AGAINST CONTRACTORS AND SUBCONTRACTORS AS WELL AS OWNERS OF BUILDINGS UNDER CONSTRUCTION.**

The Honorable Henry Lee Carter
Commonwealth's Attorney for Orange County

You ask whether the penalty provided in [§ 36-106 of the Code of Virginia \(1950\)](#), as amended, for violation of the Uniform Statewide Building Code is applicable to contractors or subcontractors as well as to the owners of buildings under construction. [Section 36-106](#) provides that:

“It shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any Code provisions, to violate any such provisions. Any such violation shall be deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than one thousand dollars.” (Emphasis added.)

It is possible for either an owner or a contractor or subcontractor to violate a Building Code provision. Under the provisions of §§ 121.0 and 122.0 of the Uniform Statewide Building Code, for example, a notice of violation or stopwork order may be issued to a contractor as well as an owner. The notice is directed to the person “responsible for the...construction...use or occupancy” in violation of the Building Code. The stopwork order may be directed to “the person doing the work,” and failure to heed the order is unlawful. It is therefore my opinion that the penalty in [§ 36-106](#) may be assessed against any person responsible for a violation, which might include contractors and subcontractors as well as owners.

John Marshall Coleman
Attorney General

1978-79 Va. Op. Atty. Gen. 292 (Va.A.G.), 1978-79 Va. Rep. Atty. Gen. 292, 1978 WL 25496

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.