

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, August 17, 2018

Libbie Mill Library
2100 Libbie Lake East Street, Henrico, Virginia

- I. Roll Call **(TAB 1)**

- II. Approval of June 15, 2018 Minutes **(TAB 2)**

- III. Approval of Final Order **(TAB 3)**

In Re: Appeal of Unity Building, LLC (Pooya Jamalreza)
Appeal No 17-12

- IV. Approval of Final Order **(TAB 4)**

In Re: Appeal of J. Matthew Hogendobler, DMD
Appeal No 17-13

- V. Public Comment

- VI. Appeal Hearing **(TAB 5)**

In Re: Appeal of KEBCO Enterprises, Inc. (Kenneth Bullock)
Appeal No. 18-03

- VII. Appeal Hearing **(TAB 6)**

In Re: Appeal of Joshua and Makiba Gaines
Appeal No. 18-05

- VIII. Interpretation Request **(TAB 7)**

William C. Yeager (Montgomery County)

- IX. Secretary's Report

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STATE BUILDING CODE TECHNICAL REVIEW BOARD

James R. Dawson, Chairman

(Virginia Fire Chiefs Association)

W. Shaun Pharr, Esq., Vice-Chairman

(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)

Joseph A. Kessler, III

(Associated General Contractors)

Eric Mays, PE

(Virginia Building and Code Officials Association)

E.G. "Rudy" Middleton

(Electrical Contractor)

Joanne D. Monday

(Virginia Building Owners and Managers Association)

Patricia S. O'Bannon

(Commonwealth at large)

J. Kenneth Payne, Jr. AIA, LEED AP BD+C

(Representing the 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)

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STATE BUILDING CODE TECHNICAL REVIEW BOARD
DRAFT MEETING MINUTES
June 15, 2018
Glen Allen, Virginia

Members Present

Mr. James R. Dawson, Chairman
Mr. W. Shaun Pharr, Esq., Vice-Chairman
Mr. Vince Butler
Mr. Daniel Crigler
Mr. Alan D. Givens
Ms. Patricia S. O'Bannon
Mr. J. Kenneth Payne, Jr.
Mr. Richard C. Witt
Mr. Aaron Zdinak, PE

Members Absent

Mr. Joseph Kessler
Mr. Eric Mays, PE
Mr. E. G. Middleton, III
Ms. Joanne Monday

Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order at approximately 10:00 a.m. by Assistant Secretary W. Travis Luter, Sr..

Roll Call

The roll was called by Mr. Luter and a quorum was present. Mr. Justin I. Bell, the board's legal counsel from the Attorney General's Office, was also present.

Elections of Officers

Mr. Luter advised the board members that the terms of the officers of the Board had expired and election of officers was needed prior to moving forward with the meeting. Mr. Luter then called for nominations for Chairman. Mr. Crigler nominated Mr. Dawson. The nomination was seconded by Ms. O'Bannon. Mr. Luter called for nominations for Chairman twice more. After hearing no further nominations Mr. Luter closed the nominations for Chairman. A vote was taken and Mr. Dawson was unanimously elected as Chairman.

Chairman Dawson called for nominations for Vice-Chairman. Mr. Dawson nominated Mr. Pharr for Vice-Chairman. The nomination was seconded by Mr. Crigler. Chairman Dawson called for additional nominations for Vice-Chairman; hearing none he closed the nominations. A vote was taken and Mr. Pharr was unanimously elected as Vice-Chairman.

Chairman Dawson called for nominations for Secretary. Mr. Witt nominated Mr. Luter for Secretary. The nomination was seconded by Mr. Crigler. Chairman Dawson called for additional nominations for Secretary; hearing none he closed the nominations. A vote was taken and Mr. Luter was unanimously elected as Secretary.

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Approval of Minutes The draft minutes of the April 20, 2018 meeting in the Review Board members' agenda package were considered. Ms. O'Bannon moved to approve the minutes with an editorial change to the spelling of the word "versus" in the next to last paragraph on page seven of the agenda package. The motion was seconded by Mr. Witt and passed unanimously.

Final Orders Appeal of Quantico City LLC (Joel Rhoades)
Appeal No. 17-8:

Mr. Givens informed the board members he would be recusing himself from the consideration of the final order as he had prior dealings with Mr. Zelnick, counsel for Quantico City LLC.

After consideration of the two final orders presented in the agenda package, Mr. Witt moved to approve the first final order, on pages 11-17, as written. Mr. Crigler seconded the motion and it passed unanimously.

Appeal of William Wiehe, Jr. (Vice Versa Corporation)
Appeal No. 17-9:

After consideration of the final order presented in the agenda package, Mr. Witt moved to approve the final order as written. Mr. Butler seconded the motion and it passed unanimously.

Public Comment Chairman Dawson opened the meeting for public comment. Mr. Luter advised that no one had signed up to speak. With no one coming forward, Mr. Dawson closed the public comment period.

New Business Appeal of Unity Building LLC (Pooya Jamalreza); Appeal No. 17-12:

A request for a continuance by Unity Building LLC was presented to the Chairman and considered by the Board. The board members unanimously agreed to deny the request and proceed with the hearing.

A hearing convened with Chairman Dawson serving as the presiding officer. The appeal involved citations under the Virginia Construction Code related to the alterations to the home owned by Nahid Momenian located at 902 McMillen Court in Fairfax County.

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

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Nahid Momenian
Scott Hagerty
Melissa Smarr

Also present was:

Paul Emerick, Esq., legal counsel for Fairfax County

The following exhibit was submitted by Paul Emerick, legal counsel for Fairfax County, without objection, to supplement the Review Board member's agenda package.

Appellee Exhibit A – Photo of the wall and header between the dining room and living room prior to alteration.

After testimony concluded, Chairman Dawson closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Unity Building LLC (Pooya Jamalreza); Appeal No. 17-12:

After deliberations, Mr. Witt moved to uphold the Notice of Violation by the Building Official and the local board decision. He further moved to require permits for the alterations to the home stating that it was unreasonable to believe the homeowner hired a different contractor to perform the same amount of work listed in the Unity Building LLC contract. The motion was seconded by Mr. Pharr and passed unanimously.

Appeal (Timeliness) of Dr. J. Matthew Hogendobler; Appeal No. 17-13:

A hearing convened with Chairman Dawson serving as the presiding officer. The issue to be resolved was whether Dr. Hogendobler filed a timely appeal of enforcement action under Part III of the Virginia Uniform Statewide Building Code (the Virginia Maintenance Code) by the City of Virginia Beach concerning the structure located at 2209 N. Lakeside Drive in the City of Virginia Beach..

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

Dr. J. Matthew Hogendobler
Wells Freed
Justin Doyle
Cheri Hainer

Also present was:

Tobias Eisenlohr, Esq., legal counsel for the City of Virginia Beach

Testimony was then presented concerning whether Dr. Hogendobler had filed a timely appeal to the City of Virginia Beach Local Board of Appeals from both parties.

After testimony concluded, Chairman Dawson closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal (Timeliness) of Dr. J. Matthew Hogendobler; Appeal No. 17-13:

After deliberation of the issue of the timeliness of Dr. Hogendoblers' appeal, Mr. Pharr moved to overturn the decision of the City of Virginia Beach Local Board of Appeals and hold that Dr. Hogendoblers' appeal was timely since the receipt of the Notice of Violation was in dispute. The motion was seconded by Mr. Payne and passed with Messrs. Crigler and Witt as well as Ms. O'Bannon voting in opposition.

Appeal (Merits) of Dr. J. Matthew Hogendobler; Appeal No. 17-13:

A hearing convened with Chairman Dawson serving as the presiding officer. The appeal involved citations under Part III of the Virginia Uniform Statewide Building Code (the Virginia Maintenance Code) by the City of Virginia Beach Building Official at a home located at 2209 N. Lakeside Drive in the City of Virginia Beach.

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After testimony concluded, Chairman Dawson closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal (Merits) of Dr. J. Matthew Hogendobler; Appeal No. 17-13:

After deliberation Mr. Butler moved to uphold the Notice of Violation by the Building Official and the decision of the local board. The motion was seconded by Mr. Witt and passed unanimously.

Secretary's Report

Mr. Luter informed the board members that Mr. Keith Brower had resigned from the Review Board.

Mr. Luter informed the Board that the next meeting would be August 17, 2018.

A brief discussion was held pertaining to meeting dates for the remainder of 2018. Mr. Luter agreed to send an email to the board members for feedback allowing board members an opportunity to view their calendars and respond accordingly.

Mr. Justin Bell, legal counsel from the Attorney General's office, gave the Review Board members an overview of the status of appeals further appealed to court.

Adjournment

There being no further business, the meeting was adjourned by proper motion at approximately 3:15 p.m.

Approved: August 17, 2018

Chairman, State Building Code Technical Review Board

Secretary, State Building Code Technical Review Board

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VIRGINIA:

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

IN RE: Appeal of Unity Building, LLC/Pooya Jamalreza
Appeal No. 17-12

DECISION OF THE REVIEW BOARD

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 (§ 2.2-4000 et seq. of the Code of Virginia).

Case History

Unity Building, LLC/Pooya Jamalreza (Unity Building), the contractor for alterations to a home located at 902 McMillen Court, Great Falls, Virginia, owned by Nahid Momenian (Momenian), appeal citations under Part I of the Uniform Statewide Building Code (Virginia Construction Code or VCC) by the Land Development Services division of the County of Fairfax (Fairfax County).

In June of 2017, a representative of Fairfax County conducted an inspection at Momenian's home resulting in the issuance of a Corrective Work Order citing six VCC violations.

Unity Building filed a timely appeal to the Fairfax County Board of Building Code Appeals (local appeals board). The local appeals board subsequently conducted a hearing and ruled to

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uphold the Corrective Work Order. Unity Building LLC filed an application for appeal to the Review Board in November of 2017. Review Board staff contacted the parties and asked for the submittal of any relevant documents. Subsequently, Review Board staff scheduled an informal fact-finding conference to meet with the parties and go over the issues in the appeal.

Appearing at the State Building Code Technical Review Board (Review Board) hearing for Fairfax County was Paul Emerick, legal counsel for the County, as well as Melissa Smarr and Scott Hagerty of the Land Development Services Department. The owner of the property Nahid Momenian was also in attendance. No one appeared at the Review Board hearing for Unity Building LLC; however, all parties were properly notified.

Findings of the Review Board

According to the statement of relief sought submitted by Unity Building LLC claim they did not perform any of the work cited in the Corrective Work Order, which required permits, and further that the work cited was performed by another contractor hired by the owner.

During the hearing, Fairfax County argued that the work cited in the Corrective Work Order was listed in the Unity Building contract as well as on the invoices paid by the owner; thus, clearly indicating Unity Building performed the work. The owner concurred and further testified that Unity Building was in fact the company that completed the work cited. Photographs of the work cited were provided along with testimony.

The Review Board finds that the work cited in the Corrective Work Order was performed by Unity Building because it is unreasonable to believe the homeowner hired a different contractor to perform the work which was listed in the Unity Building LLC contract and on the paid invoices.

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Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the issuance of the Corrective Work Order by Fairfax County and the local appeals board decision, to be, and hereby is, upheld.

Chairman, State Building Code 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 W. Travis Luter, Sr., 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.

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of J. Matthew Hogendobler, DMD
Appeal No. 17-13

DECISION OF THE REVIEW BOARD

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 (§ 2.2-4000 et seq. of the Code of Virginia).

Case History

J. Matthew Hogendobler, DMD (Hogendobler), owner of the home located at 2209 N. Lakeside Drive in the City of Virginia Beach, appeals determinations of the City of Virginia Beach Code Enforcement Division, in enforcing Part III of the Uniform Statewide Building Code (Virginia Maintenance Code or VMC), concerning an existing swimming pool on the property.

City of Virginia Beach Code Enforcement Division issued an inspection report and VMC Notice of Violation for the structure in June of 2017 requiring the structure to be maintained in a clean and sanitary condition, and in good repair, and indicated the pool liner was ripped and in disrepair, and the pool pump and filter were not operational.

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In August of 2017, Hogendobler filed an appeal by letter to the City of Virginia Beach City Manager (City Appeals Board). The City Appeals Board heard Hogendobler's appeal in October of 2017 and ruled to dismiss his appeal as being untimely. The City Appeals Board also heard the case on its merits and found the notice of violation to be appropriately issued.

Hogendobler filed an application for appeal to the Review Board in November of 2017. Review Board staff contacted the parties and asked for the submittal of any relevant documents. Subsequently, Review Board staff scheduled an informal fact-finding conference to meet with the parties and go over the issues in the appeal.

Appearing at the Review Board (Review Board) hearing for the appellee, the City of Virginia Beach (Virginia Beach), was Tobias Eisenlohr, legal counsel for the City, as well as Cheri Hainer, Wells Freed, and Justin Doyle. Appearing at the Review Board hearing for the appellant was Hogendobler.

Findings of the Review Board

I. Whether to dismiss the appeal as untimely

The action under review is dated June 26, 2017 and states that it is a notice of violation. Virginia Beach argues the Notice of Violation was sent via mail, per department policy, and that the mailed notice was not returned to Virginia Beach. Hogendobler argues he did not receive the June 26, 2017 notice until December 1, 2017. The Review Board members find that the receipt of the notice of violation is in dispute and the appeal to be timely.

II. Whether the structure is regulated by the VMC and whether to overturn the issuance of the June 26, 2017 VMC Notice of Violation.

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Virginia Beach argues that the structure in Hogendobler's backyard was a swimming pool in deployable condition in need of maintenance. Hogendobler argues the structure is no longer a swimming pool, rather has been converted to a pond. The Review Board members find that the structure is a swimming pool regulated by the VMC; therefore, the cited violations listed on the Notice of Violation are applicable.

Final Order

I. Whether to dismiss the appeal as untimely

The appeal having been given due regard, and for the reasons set out herein, the Review Board members orders the decision of the County appeals board that the appeal was not timely filed to be, and hereby is, overturned.

II. Whether the structure is regulated by the VMC and whether to overturn the issuance of the June 26, 2017 VMC Notice of Violation.

The appeal having been given due regard, and for the reasons set out herein, the Review Board members orders the decision of the County appeals board that the notice of violation issued by the City of Virginia Beach Building Official relative to the property at 2209 N. Lakeside Drive was appropriately issued to be, and hereby is, upheld.

Chairman, State Building Code Technical Review Board

Date entered: _____

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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 W. Travis Luter, Sr., 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.

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of KEBCO Enterprises, Inc.
Appeal No. 18-03

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD
(REVIEW BOARD)
(For Determination of Whether to Dismiss as Untimely)

IN RE: Appeal of KEBCO Enterprises, Inc. – Kenneth Bullock
Appeal No. 18-03

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Disposition of the Appeal

1. Kenneth Bullock, of KEBCO Enterprises, Inc. (KEBCO), a building construction company filed an appeal of enforcement action under the Virginia Uniform Statewide Building Code, Part I, Construction (VCC), by the City of Suffolk Department of Planning and Community Development (City PCD), the department responsible for code enforcement, relative to a home constructed at 4281 Cole Avenue Suffolk.

2. In May of 2017 a representative of the City PCD conducted an inspection at the Cole Avenue home resulting in the issuance of a violation notice. The notice of violation dated May 23, 2017 cited twelve violations.

3. KEBCO appealed the violation notice to the City of Suffolk Board of Building Code Appeals (City appeals board) by application dated June 16, 2017. The City appeals board conducted a hearing on November 13, 2017, attended by KEBCO and representatives of the City PCD. A resolution was issued by the City appeals board upholding the enforcement action of the City PCD. The City provided a copy of the US postal service certified mail receipt green card which shows Mr. Bullock signed for receipt of the City appeals board decision on February 7, 2018.

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4. KEBCO submitted an application for appeal to the Review Board with a certification of service date of March 2, 2018.

5. This staff document along with a copy of all documents submitted will be sent to the parties and opportunity given for the submittal of additions, corrections or objections to the staff document and the submittal of additional documents or written arguments to be included in the information distributed to the Review Board members for the appeal hearing before the Review Board.

Suggested Issue for Resolution by the Review Board

1. Whether KEBCO's appeal to the Review Board should be dismissed as untimely; if ruling the appeal is timely then:

2. Whether to overturn the decision of the City building official that a violation of VCC Section R401.3 (Drainage) exists and the local board upholding of that decision.

3. Whether to overturn the decision of the City building official that a violation of VCC Section R401.3 (Drainage; Exception) exists and the local board upholding of that decision.

4. Whether to overturn the decision of the City building official that a violation of VCC Section R905.1 (Roof Covering application) exists and the local board upholding of that decision.

5. Whether to overturn the decision of the City building official that a violation of VCC Section R905.2.1 (Sheathing requirements) exists and the local board upholding of that decision.

6. Whether to overturn the decision of the City building official that a violation of VCC Section R703.11.1 (Insulation) exists and the local board upholding of that decision.

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7. Whether to overturn the decision of the City building official that a violation of VCC Section R703.8 (Flashing) exists and the local board upholding of that decision.

8. Whether to overturn the decision of the City building official that a violation of VCC Section R502.6 (Bearing) exists and the local board upholding of that decision.

9. Whether to overturn the decision of the City building official that a violation of VCC Section R606.6.1 [Pier cap(s)] exists and the local board upholding of that decision.

10. Whether to overturn the decision of the City building official that a violation of VCC Section P2605.1 (General) exists and the local board upholding of that decision.

11. Whether to overturn the decision of the City building official that a violation of VCC Section R507.4 through 507.8.1 (Deck Construction) exists and the local board upholding of that decision.

12. Whether to overturn the decision of the City building official that a violation of VCC Section R602.3 (Design and construction) exists and the local board upholding of that decision.

13. Whether to overturn the decision of the City building official that a violation of VCC Section R403.1.6 (Foundation Anchorage) exists and the local board upholding of that decision.

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Basic Documents

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CITY OF SUFFOLK

442 MARKET STREET, POST OFFICE BOX 1858, SUFFOLK, VIRGINIA 23439-1858
PHONE: (757) 514-4150 FAX: (757) 514-4199

DEPARTMENT OF
PLANNING & COMMUNITY DEVELOPMENT
Division of Community Development

NOTICE OF VIOLATION Section 115.2

DATE: 5-23-2017 TYPE OF INSPECTION: **BUILDING**

TAX MAP: 13A*JAMES*18 Use Group: **R-5**
304529700

LOCATION: 4281 Cole Avenue BUILDING PERMIT: **BLD2014-01071**
Suffolk, VA 23432

CONTRACTOR: **KEBCO Enterprises Inc.**
C/o Kenneth Bullock
5106 Clipper Cove Lane
Suffolk, VA 23435

An inspection of the above referenced property was conducted on May 09, 2017. In accordance with section 118 (Buildings and Structures Becoming Unsafe during Construction) of the 2012 Edition of the Virginia Residential Code, you are hereby notified that the structure located on this site doesn't comply with the following Residential Code sections:

R401.3 Drainage. The grade shall fall a minimum of 6 inches (152 mm) within the first 10 feet (3048 mm). **Repair perimeter grading where needed.**

R401.3 Exception (Area in front of Garage door): Where lot lines, walls, slopes or other physical barriers prohibit 6 inches (152 mm) of fall within 10 feet (3048 mm), drains or swales shall be constructed to ensure drainage away from the structure. **Impervious surfaces within 10 feet (3048 mm) of the building foundation shall be sloped a minimum of 2.0 percent away from the building.**

R905.1 Roof covering application. Roof coverings shall be applied in accordance with the applicable provisions of this section and the manufacturer's installation instructions. Unless otherwise specified in this section, roof coverings shall be installed to resist the component and cladding loads specified in Table R301.2(2), adjusted for height and exposure in accordance with Table R301.2(3). **Repair right rear hip adjoining the edge of the roof.**

R905.2.1 Sheathing requirements. Asphalt shingles shall be fastened to solidly sheathed decks. **Repair right rear hip adjoining the edge of the roof.**

R703.11.1 Installation. Vinyl siding, soffit and accessories shall be installed in accordance with the manufacturer's installation instructions. In some areas there is evidence of face nailing. **Repair where needed or provide information from the manufacture that this installation is acceptable.**

R703.8 Flashing. *Approved* corrosion-resistant flashing shall be applied shingle-fashion in a manner to prevent entry of water into the wall cavity or penetration of water to the building structural framing components. **Rear door area and provide evidence that flashing was installed at roof area over front porch.**

R502.6 Bearing. The ends of each joist, beam or girder shall have not less than 1.5 inches (38 mm) of bearing on wood or metal and not less than 3 inches (76 mm) on masonry or concrete except where supported on a 1-inch by 4-inch (25.4 mm by 102 mm) ribbon strip and nailed to the adjacent stud or by the use of approved joist hangers. **Install shims of treated material and uniform thickness where needed.**

R606.6.1 Pier cap(s). Hollow piers shall be capped with 4inches (102 mm) of *solid masonry* or concrete, a masonry cap block, or shall have cavities of the top course filled with concrete or grout. **Repair internal pier caps where needed.**

P2605.1 General. Piping shall be supported in accordance with the following: 1. Piping shall be supported to ensure alignment and prevent sagging, and allow movement associated with the expansion and contraction of the piping system. 2. Piping in the ground shall be laid on a firm bed for its entire length, except where support is otherwise provided. 3. Hangers and anchors shall be of sufficient strength to maintain their proportional share of the weight of pipe and contents and of sufficient width to prevent distortion to the pipe. Hangers and strapping shall be of *approved* material that will not promote galvanic action. Rigid support sway bracing shall be provided at changes in direction greater than 45 degrees (0.79 rad) for pipe sizes 4 inches (102 mm) and larger. 4. Piping shall be supported at distances not to exceed those indicated in Table P2605.1. **Install hangers or strapping as needed on waste line piping (maximum horizontal run shall be six feet).**

Decks shall be constructed per sections R507.4 through R507.8.1 (see attachment).

R602.3 Design and construction. Exterior walls of wood frame construction shall be designed and constructed in accordance with the provisions of this chapter and Figures R602.3 (1) and R602.3 (2) or in accordance with AF&PA's NDS. Components of exterior walls shall be fastened in accordance with Tables R602.3 (1) through R602.3 (4). **Repair or replace rear deck damaged railings where needed.**

R403.1.6 Foundation Anchorage. There are connectivity issues at the rear foundation system. The framing and foundation components (foundation wall, sill plate, girders and floor joints are required to be properly connected. Correction of the anchorage shall be in accordance with the engineers repair detail.

You have 30 days from receipt of this notice to abate this violation. Please be advised that violations of the Virginia Construction Code are unlawful and punishable as **criminal offences**. **119.5 Right of appeal; filing of appeal application.** Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA. **The applicant shall submit a written request for appeal to ADMINISTRATION 2012 VIRGINIA CONSTRUCTION CODE 23 to the LBBCA within 30 calendar days of the receipt of the decision being appealed.** The application shall contain the name and address of the owner of the building or structure and in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the building official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a building official's decision. Please contact me at 514-4167, so we may bring this matter into compliance.

Respectfully,



Susan Gardner; Codes Inspector II

Cc
Stanley Skinner CBO; Assistant Director Community Development

City of Suffolk
Community Development
Phone: 757-514-4150
Fax: 757-514-4199

Board of Building Code Appeals
c/o Community Development
442 W. Washington Street
Suffolk, VA 23434

APPLICATION FOR APPEAL

Appellant Information (Name, address and telephone number of applicant for appeal.)

Kebecco Enterprises, Inc. 757-435-4305
P.O. Box 6749, Chesapeake, VA 23323
previous owner and contractor

Related Party Information (Name, address and telephone number of others involved.)

Ashley Grant & Anthony Grant, Jr.
4281 Cole Avenue, Suffolk, VA 23432
owners of the property

Additional Information (To be submitted with this application)

1. Copy of decision or action being appealed.
2. Statement of reason for appeal.
3. Statement of specific relief sought.

CERTIFICATE OF SERVICE

I hereby certify that on the ~~14th~~ ^{16th} day of June, 2017, a completed true copy of the foregoing Application for Appeal, including any additional information required above, was delivered or sent to the Board of Appeals and all related parties listed.

Signature of Applicant: [Handwritten Signature]
Name (print or type): Kenneth R. Bullard, President

RESOLUTION NO. 02-2017

**CITY OF SUFFOLK BOARD OF BUILDING CODE APPEALS
DECISION**

**4281 COLE AVE, SUFFOLK, VIRGINIA, ZONING MAP 13A *JAMES, PARCEL *18
LBBCA 02-2017**

WHEREAS, Kebco Enterprise Inc. c/o Kenneth Bullock, applicant, by letter dated June 16, 2017, requested a hearing with the City of Suffolk Board of Building Code Appeals for a certain tract of land situated in the City of Suffolk, Virginia, which land is designated on the Zoning Map of the City of Suffolk, Virginia, as Zoning Map 13A James, Parcel 18; and,

WHEREAS, the appeal hearing was held in the City of Suffolk Council Chambers on November 13, 2017, at 1:00 p.m.; and

WHEREAS, the applicant Kebco Enterprise Inc. c/o Kenneth Bullock and Wayne Ables of Wayne Ables Heating & Air Conditioning, Inc. was present at the hearing and representing the City of Suffolk were Michael Robinson, Susan Gardner and Sam Adams.

NOW, THEREFORE, BE IT RESOLVED by the Board of Building Code Appeals of the City of Suffolk, Virginia, that:

The Board of Building Code Appeals



1. X UPHOLDS _____ REVERSES _____ MODIFIES the Building Official's decision with respect to appeal identified as R401.3; and,
2. X UPHOLDS _____ REVERSES _____ MODIFIES the Building Official's decision with respect to appeal identified as R404.3; and,
3. X UPHOLDS _____ REVERSES _____ MODIFIES the Building Official's decision with respect to appeal identified as R905.1; and,
4. X UPHOLDS _____ REVERSES _____ MODIFIES the Building Official's decision with respect to appeal identified as R905.2.1; and,
5. X UPHOLDS _____ REVERSES _____ MODIFIES the Building Official's decision with respect to appeal identified as R703.11.1; and,
6. X UPHOLDS _____ REVERSES _____ MODIFIES the Building Official's decision with respect to appeal identified as R703.8; and,
7. X UPHOLDS _____ REVERSES _____ MODIFIES the Building Official's decision with respect to appeal identified as R502.6; and,

8. UPHOLDS REVERSES MODIFIES the Building Official's decision with respect to appeal identified as R606.6.1; and,
9. UPHOLDS REVERSES MODIFIES the Building Official's decision with respect to appeal identified as P2605.1; and,
10. UPHOLDS REVERSES MODIFIES the Building Official's decision with respect to appeal identified as R602.3; and,
11. UPHOLDS REVERSES MODIFIES the Building Official's decision with respect to appeal identified as R403.1.6; and,

BE IT FURTHER RESOLVED that any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, and (804) 371-7150.




Chairman, Board of Building Code Appeals

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY												
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature  <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>Kenneth Bullock</u> C. Date of Delivery <u>02/07/18</u></p>												
<p>1. Article Addressed to: Kenneth Bullock P. O. Box 6749 Chesapeake, VA 23323</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No</p>												
 9590 9403 0917 5223 8316 13	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
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PS Form 3811, July 2015 PSN 7530-02-000-9083	Domestic Return Receipt												

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Date Calculator: Add to or Subtract From a Date – Results

This calculator enables you to add or subtract to a date to calculate a past or future date and time.

From **Wednesday, February 7, 2018**

Added 21 days

Result: Wednesday, February 28, 2018

Calendar showing period from February 7, 2018 to February 28, 2018

February 2018						
21 days added						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

= Start date (Feb 7, 2018) = Final result date (Feb 28, 2018)

[? Need some help?](#)



Time & Date Calculator
– iOS

See how long remains before a deadline or exactly when those 30 days are up. [More >](#)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhcd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

- Uniform Statewide Building Code
- Statewide Fire Prevention Code
- Industrialized Building Safety Regulations
- Amusement Device Regulations



Appealing Party Information (name, address, telephone number and email address):

Kebco Enterprises Inc. c/o Christopher H. Falk Esq., 205 S. Battlefield Blvd.,
Chesapeake, Virginia 23322 - 757-482-4224

Opposing Party Information (name, address, telephone number and email address of all other parties):

City of Suffolk Board of Building Code Appeals, City of Suffolk, P.O. Box 1858
Suffolk, Virginia 23439

Additional Information (to be submitted with this application)

- Copy of enforcement decision being appealed
- Copy of record and decision of local government appeals board (if applicable and available)
- Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 4 day of March, 2018, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: _____

Name of Applicant: _____

Kamell E. Bell
(please print or type)

The Law Firm of Christopher H. Falk

205 S. Battlefield Blvd., Suite 100

Chesapeake, Virginia 23322

(757)482-4224 Office

(757)482-3633 Fax

Falk@aol.com

March 1, 2018

VIA OVERNIGHT MAIL AND FACSIMILE (804) 371-7092

Virginia State Technical Review Board

Main Street Centre

600 E. Main Street, Suite 300

Richmond, Virginia 23219

Re: 4281 Cole Ave., Suffolk, VA

Our client : Kebco Enterprises

Dear Sir/Madam:

Please find enclosed Kebco Enterprises Inc., c/o Kenneth Bullock's appeal from the Suffolk Board of Building Code Appeals, upholding a decision by the City of Suffolk regarding the alleged noncompliance of the drainage, roof covering application, sheathing requirements, installation, flashing, bearing , pier caps, general piping requirements, design and construction, and foundation anchorage at the above residence with the applicable sections of the Uniform Statewide Building Code (see attached decision).

In this appeal, Kebco Enterprises Inc. would request that the Technical Review Board hear all evidence regarding the alleged violations related to R401.3, R404.3, R905.1, R905.2.1, R703.11.1, R703.8, R502.6, R606.6.1, P2605.1, R602.3, and R403.1.6 and overturn the City of Suffolk's determination that these items are not in compliance with the Building Code.

Thank you in advance for your time and attention to this matter. If you should have any questions, please feel free to contact me.

Sincerely,


Christopher H. Falk, Esq.

Enclosures – Appeal documents
Cc: Kenneth Bullock
City of Suffolk
City of Suffolk Board of Building Appeals

Documents Submitted By the City of Suffolk

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CERTIFICATE OF OCCUPANCY

5/27/2015

3:31PM

This certificate is issued pursuant to the requirements of the Uniform Statewide Building Code, Zoning Ordinances and other applicable codes and ordinances certifying that at the time of issuance this structure is in compliance with the above mentioned codes and ordinances.

Owner or Contractor: **KEBCO ENTERPRISES INC**
1332 CAMBRIDGE WAY
CHESAPEAKE, VA 23320

NANSEMOND 1646

SUFFOLK 1742

Use Class:

NWR

SFD

Project No: **PRJ2014-02946**

Bldg. Permit No: **BED2014-01071**

Group:

R5

Occupancy Load:

Type Construction:

5B

Building Address:

4281 COLE AV

Building Official:

John D. Wilson

Date:

5/27/2015

**VAUSBC CODE
EDITION
2009**

Post on the Premises in a Conspicuous Place
Shall Not Be Removed Except by Building Official

This Certificate of Occupancy is not transferrable and becomes invalid upon any change of use or occupancy, or any changes to the building or premises, or upon any violation of the Uniform Statewide Building Code.

Third Party Inspection Report on 4281 Cole Avenue, Suffolk, VA
by Joseph E. Barbeau, Jr. RBI/15-0375
May 10, 2017

Overview

At the City of Suffolk, Building Office request, this inspector examined the file documents and then performed a physical inspection of the above named property. Whereas the property owner had raised issues regarding the findings of the city building office, it was determined that bringing in an outside agency to inspect this property, and report their findings, would ensure the transparency of these official determinations. This inspection consisted of a visual only inspection, and did not include any special equipment or tools; there were no destructive means utilized to determine hidden conditions, or inaccessible areas. This inspection was also limited in scope, disregarding aspects that had been initially reported, and since that reporting have also been resolved, such as the attachment and anchorage of the rear wall.

This structure is a hip roofed, vinyl sided, wood framed Single Family Home, with a crawl space, and an attached garage, placed upon a fairly level property. Building Department documents demonstrate that the construction of this wood framed SFD began in 2015, though a period of inactivity existed prior to the structure being closed to the weather. The VSBC 2012 would therefore be the governing document for this structure. This structure would have been subjected an abnormal level of weather intrusion, and the deleterious effects of the elements as a result. The majority of the complaints regarding this structure have their basis in the realm of moisture issues, that have been present since the initial construction, throughout the numerous repairs, and at the present time.

Exterior

Beginning with the exterior of the property two specific problems are evident. The first item is that this structure does not have a gutter and downspout system. This ensures that roof runoff is unlikely to drain away from the structure, nor can downspout rain leaders be utilized to enhance such drainage. Further, the exterior grade does not appear to meet the requirement for a six inch drop in elevation at a point ten feet from the structure, per R401.3, which would act to mitigate this roof run off. Instead this lack of fall will cause such rainwater to accumulate along the foundation adding to the moisture issues. As one of the complaints has been that the accumulation of moisture beneath the barrier system in the crawl space is allowing the growth of mold, and the accelerated decay of the framing materials; any efforts to improve the movement of stormwater away from the structure should be encouraged.

Though the installation of a gutter and downspout system is not required by the code in this instance, such an installation, along with long rain leaders attached to the downspouts, and some improvements regarding the fall of the grading, would all contribute to the lessening of this moisture issue. Further, it is likely that the installation of a gutter system, and improvements to

the grading would provide immediate relief to these moisture issues, at a lower expense than some of the venting and air circulation suggestion that have been previously made. Similarly, it has been previously reported by others that the combination of an unlevel slab and control joint at the garage is causing excessive cracking to that slab, along with the intrusion of moisture to the garage. In this instance, the installation of a french drain along the entrance to the garage would act to divert such excess water away from this area. Any efforts to remove the water that is attempting to intrude into this structure, appears to be a better solution than attempting to just mitigate the effects of this intrusion.



Image 1, Showing lack of gutters or downspouts.

The property owner has mentioned issues with the installation of the roofing materials including the installation of flashing on the roof. He has provided a report from a roofing contractor describing the same problem. This inspection did not include inspection of any roof elements with the exception of those that could be discerned from the ground or from within this structure. Such an observational inspection would not include the lifting or movement of any roofing material, as that could act to cause additional issues to an existing problem or create a new concern with the seal of these materials. One area of concern did arise during this aspect of the investigation, at the right rear hip adjoining the edge of this roof. It does appear that some of the roof and cap tiles in this area are lifted, as might be observed after an ice dam incident, or possible wind action; though no specific injury is noticed to either the interior or exterior as a result of this lifting. This could indicate the use of improper fasteners at this location, that are too short to properly bite into the sheathing, thus allowing the wind to lift these tiles due to lack of anchorage to the substrate.



Image 2, Showing lifting of shingles at left hip.



Image 3, Close-up of lifting shingles at left hip.

Similarly, the homeowner has raised issue with the installation of the Vinyl Siding. This installation is not the best workmanship, but that alone does not constitute a code issue. In such installations per R703.11.1 the installation must be in accordance with the manufacturer's installation instructions. In some areas there is evidence of face nailing of this material. This inspector cannot recall any manufacturer that allows such nailing, rather in most cases this is specifically disallowed. Poor installation of this material is allowing the interlock to release, and the contractor has face nailed through the weep holes in an effort to prevent this separation. This matter should be resolved through the contractor, or through a court of competent jurisdiction for relief.



Image 4, Showing side wall of home where face nails have been installed through siding weep holes.



Image 5, SHowing Dutch lap siding that has been face nailed through the weep holes.



Image 6, Showing the opposing side wall where face nails have been used to secure siding.

Attic

The internal investigation began in the attic, accessible through an attic hatch with an integral ladder. The area at the top of this ladder has installed plywood decking, however the majority of this attic is open framing. A convenience light is provided for illumination in this area. The homeowner pointed out a number of protruding nails that show evidence of rust, along the exposed surfaces. He further insists that no such rust appeared at the time of his purchase of the property. However, it must be noted that the ensuing years, coupled with the unconditioned nature of this area would allow for such rust development on any unprotected ferrous material. Eight mushroom cap style vents are installed on this roof, and the eaves are vented through the use of perforated vinyl soffit material. Separation of the conditioned space is achieved through the installation of insulating materials between the ceiling joists. It appears to this inspector that additional insulating material has been added to this area, as evidenced by the appearance of different colored layers in this material. The homeowner also indicated that on occasion he has observed condensation upon the under side of the roof sheathing, though this would be normal for an unconditioned space, and does not evidence itself as excessive, through staining to any wood or insulation surfaces. Though some missed nails were observed to be angling through the rafters, or missing them completely, there was not enough of this to be considered as affecting the integrity of this structure.



Image 7, Showing 2 of the 8 vents installed in the hip roof.



Image 8, Showing Soffit Vents.



Image 9, Showing exposed nail end with evidence of rust, in unconditioned attic.

Second Level

At the second level, which is primarily used for bedrooms, bathrooms, and a laundry room, the homeowner pointed out numerous locations where there were cracks in the drywall finish and moldings separations, along with doors that were sticking. Though concerning to this owner, they did not represent issues with the overall structure, but rather seem to represent normal settling of this structure; possibly exhibiting some warping and twisting of framing members that had been exposed to the elements during the construction hiatus. The homeowner also pointed out a door whose face was delaminating from its internal structure. While this could represent improper storage by the installer, it could as easily represent a flaw in the manufacturing process of this door. This issue would be covered under the builders or material suppliers warranties, but is outside the scope of the building department or the code.



Image 10, Showing typical drywall cracking at doorway.

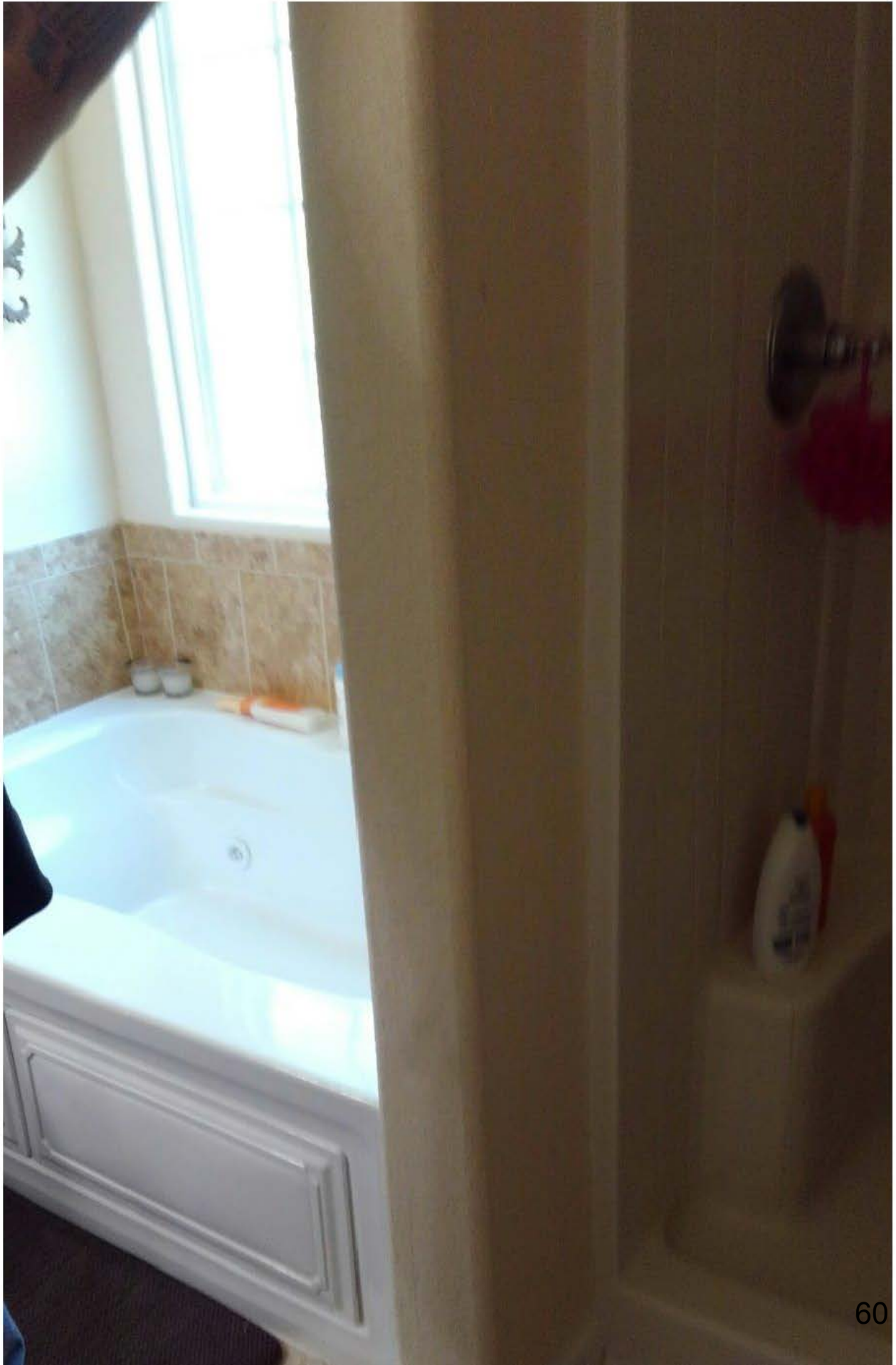


Image 11, Showing the poor quality of the drywall work at Master Bathroom Shower.



Image 12, Showing further evidence of drywall cracking at ceiling.

This homeowner also had a concern regarding excessive moisture within the laundry room. Upon inspection it was noted that an exceptionally long flexible outlet pipe was in use to vent this clothes dryer. Further, this long outlet pipe contained numerous turns, which act to reduce the efficiency of this outlet vent, thus increasing the likelihood of the build up of condensation. Similarly, in the master bathroom a mildew condition was observed and pointed out at the shower stall just above the shower head. This is more of a maintenance/housekeeping issue than that of a construction issue due to the creation of condensing steam when the shower is in use, providing the needed moisture to create this mildew.



Image 12, Showing outlet hose arrangement behind clothes dryer.

The final issue at the second level is that of the half wall that separates the staircase from the hallway. There has been documentation regarding the initial issue and the repairs to this area, and this inspector was able to place significant force against this structure without significant deflection. It is this inspector's position that the repairs to this structure have provided for acceptable results that meet code requirements per R312.1.1, for a fall protection system, and any flex remaining does not represent a safety concern.

First Level

At the first level of this SFD five specific issues were raised, two concerning water leaks at the deck door and near the pantry closet, one regarding a bow in the wall to the left of the door that enters the garage from the home, one within the pantry closet, and the fifth at various locations concerning additional cracking of drywall at door corners. Examination of the exterior of this door suggests that no flashing was installed above the door behind the vinyl siding, which would allow intrusion of water into the wall at this opening. Such intrusion would provide for degradation of the framing and door jambs, as well as the threshold and nearby floor coverings. The lifting of the flooring material at this locations suggests that this area needs to be exposed and repaired per R703.8 to prevent further damage. The second issue regards a water leak of indeterminate origin on the ceiling near the pantry closet. This appears to have been caused by a plumbing leak or overflow problem, and seems to have been effectively though not aesthetically repaired. Relief for such a concern rests between the homeowner and his contractor and is not within the purview of the code official.



Image 13, Showing ceiling damage at pantry closet.

Traveling from the house into the garage, a bow can be seen in the wall section to the left of this door. This is unlikely a structural issue, but rather the evidence of the installation of a warped framing element, or a wet element that warped once installed. At the moment this appears to be held in check by the door framing, but over time this might affect the proper operation of the door itself, in particular the lockset, as this is nearest the lock jamb. Within the pantry closet the homeowner identified a location at the rear right where a hole had existed into the crawl space below. It appears that the contractor's repair for this issue had been to fill the hole with caulking material. Again this repair effectively fixed the problem, but it does so without concern for aesthetics, further lack of any solid material provides an easy route for vermin to enter this home. Lastly comes the various drywall cracks that have been recognized and discussed on the second floor. Herein we have more of the same, where the drywall evidences cracking as a result of settling rather than that of structural concerns.



Image 14, Showing cracking at garage door.

It should be noted here, as we proceed to a discussion of the crawl space area, that over the past year these issues have been addressed through various repairs and fixes. These repairs and fixes have involved work upon the rear sill and band boards, the half wall at the second floor, and additions of shims under the main beams. As such through these repairs, various elements of the structure have been disturbed, moved, or adjusted. Coupled with the issues raised concerning the construction hiatus and the exposure of the framing to the weather, it is not surprising that this might be reflected in the condition of the drywall finishing. A shim being driven under the main beam is more than sufficient to create hairline fractures in this drywall finishing, or cause the realignment of the framing elements which could allow a door to become skewed.

Crawl Space

Within the crawl space there were at least four internal piers show signs of damage, and varying degrees of repair to the solid cap stones. Some of these have been repaired with mortar, and one that had been split almost completely in half appears to have been just placed back in position without any form of fastening. It has been suggested that the damage was caused through the use of cut nails to attach the plates to the cap stones. As this is also not an acceptable anchoring device the correct repair would be to support the beam from both sides remove and replace the damaged block, and re-anchor the beam, using appropriate shims and fasteners for this type of installation. Failure to repair these internal piers correctly could result

in further degradation of the structure over time, and bring with it both danger and far more costly repairs as a result.



Image 15, Showing non treated, non uniform thickness wood being used to shim beam at crawl space.

Though there exist more than sufficient vents for this crawl space, attention to these is required. This inspector identified one such vent at the front of the structure where the vent is becoming in-filled with debris and soil from the landscaping. As this is the only vent along the front of the crawl space. Regarding the installation of shims under the main beams, while this is acceptable, the material used must be resistant to moisture and decay, and it appears that some of these shims do not utilize such treated materials. Further, these shims should be constructed of solid material of uniform thickness. Use of tapered shims presents the possibility for movement of these shims, particularly during an earth shaking event, providing a lower degree of integrity to this structure in that situation.



Image 16, Showing blocked vent at front of structure in crawl space.

It appears to this inspector that additional sand has been placed in this crawl space, under the moisture barrier. This barrier is properly placed and secured, and there does exist some wet areas beneath this plastic, however the plastic does provide some protection from this moisture. Earlier mentioned mitigation efforts would act to improve this situation. It was noted during this inspection that two of the support straps for the waste line have been removed (probably during this installation of sand and moisture barrier) but have not been properly replaced. This leaves the pipe unsupported for at least eighteen feet, when code dictates this support should be at intervals no less than six feet along a horizontal run. This is a violation of the P2605 of the Plumbing Code, and must be addressed.

Lastly is the rear deck, that has been repaired after being called out previously by others. While some work has been done to this structure there remain some issues. Specifically additional straps were to be installed to improve the connection of the railing posts. These were found to be missing some nails, with one device only nailed at the railing post but not the deck framing. The railings themselves have been fastened with too many nails, causing deterioration of the material at the ends, where these connections have been made. The damaged railings should be removed and replaced with fastenings per R602.



Image 17, Showing degraded deck railing from over nailing.



Image 18, Showing missing connector nails at deck railing post.

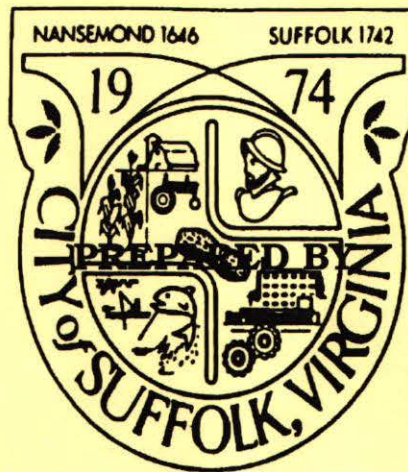
Summary

Unfortunately, this structure represents an adherence to the minimum standards as provided in the code. By meeting this minimum they had for the most part satisfied the code requirements, the enforcement of which falls to the local Building Office. Such Code Enforcement personnel are bound to accept this minimum requirement, and cannot require a higher standard without a compelling case for such an increase. Beyond this minimum it is at the discretion of the contractor to upgrade to a higher level. Sadly, mis-interpretation by the homeowner, fueled by inflammatory commentary within the reports from other parties, have acted to blur the lines of the Building Offices responsibilities compared to those of the contractor. In the end it appears to this inspector that the City of Suffolk Building Department has done a good job of ensuring this structure met these code minimums, identified problems, and worked diligently to resolve these issues for the property owner.

While it is clear that certain aspects of this work have needed repair, the majority of the complaints are between the contractor and the property owner, and outside the realm of code enforcement. In specific there are mitigation efforts that could act to quell some of the issues on this property. While in a perfect world the issues could be raised and the contractor would make a good faith effort to immediately resolve these matters. However, barring that it would be in the best interests of the property owner to not only make these repairs, but to keep accurate records of the expenses incurred through these repairs. In this way the property could be protected while the property owner can seek judgement through a court of competent jurisdiction to offset these expenses.

SUFFOLK BOARD OF BUILDING CODE APPEALS

AGENDA
NOVEMBER 13, 2017



PREPARED BY THE CITY OF SUFFOLK
DEPARTMENT OF PLANNING & COMMUNITY DEVELOPEMNT OFFICE OF
THE BUILDING AND HOUSING/PROPERTY MAINTENANCE OFFICIALS

THIS MEETING WILL BE HELD AT 1:00 P.M. IN THE SUFFOLK CITY COUNCIL
CHAMBERS OF THE MUNICIPAL BUILDING, LOCATED AT 442 W.
WASHINGTON STREET, SUFFOLK VIRGINIA.

MITCHELL WILCOX
CHAIRMAN

MICHAEL W. ROBINSON
SECRETARY
mrobinson@suffolkva.us
757-514-4156

**AGENDA
CITY OF SUFFOLK
BOARD OF BUILDING CODE APPEALS
NOVEMBER 13, 2017 – 1:00 P.M.
CITY COUNCIL CHAMBERS**

I. CALL TO ORDER & ROLL CALL

II. APPROVAL OF THE MINUTES

January 25, 2017 Meeting

III. BOARD HEARING

NOVEMBER 13, 2017 Meeting

LBBCA 02-2017

Kebco Enterprises Inc. c/o Kenneth Bullock

HEARING ITEMS

1. R401.3 – Drainage (perimeter)
2. R401.3 – Exception (Area in front of garage door)
3. R905.1 – Roof covering
4. R905.2.1 – Sheathing Requirements
5. R703.11.1 – Installation of vinyl siding
6. R703.8 – Flashing (front porch)
7. R502.6 – Bearing (shims)
8. R606.6.1 – Pier cap(s)
9. P2605.1 – General Piping Support
10. R602.3 – Design and Construction (repair deck)
11. R403.1.6 – Foundation Anchorage (rear wall)

IV. OLD BUSINESS

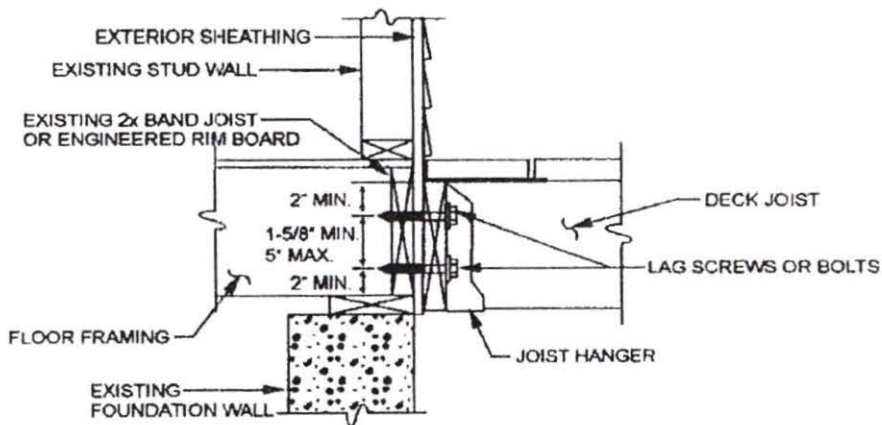
Results of the Building Official's reevaluation decision regarding the proper sizing of the heating and cooling system

V. NEW BUSINESS

VI. ADJOURNMENT

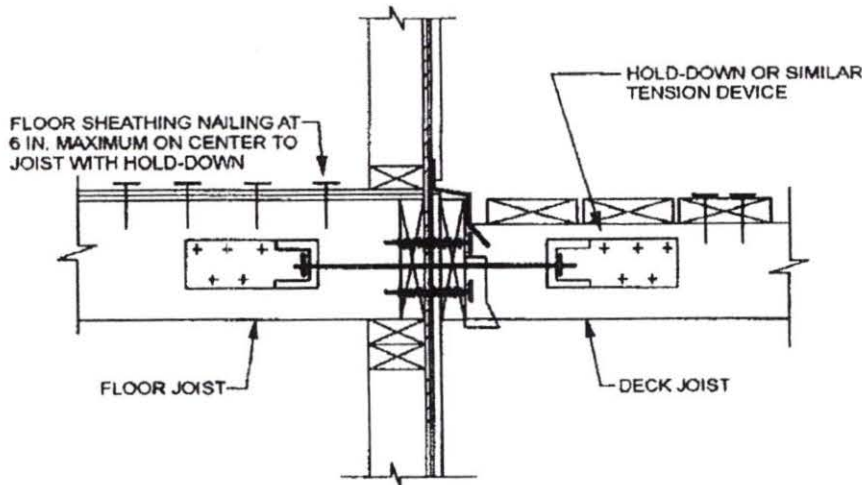
LBBCA 02-2017

FLOORS



For SI: 1 inch = 25.4 mm.

FIGURE R507.2.1(2)
PLACEMENT OF LAG SCREWS AND BOLTS IN BAND JOISTS



For SI: 1 inch = 25.4 mm.

FIGURE 507.2.3
DECK ATTACHMENT FOR LATERAL LOADS

R507.4 Decking. Maximum allowable spacing for wood joists supporting decking shall be in accordance with Table R507.4. Wood decking shall be attached to each supporting member with a minimum of (2)#8d nails or (2)#8 wood screws.

TABLE R507.4
MAXIMUM JOIST SPACING (Inches)

MATERIAL TYPE AND NOMINAL SIZE	MAXIMUM JOIST SPACING	
	PERPENDICULAR TO JOIST	DIAGONAL TO JOIST*
3/4-inch thick wood	16	12
2-inch thick wood	24	16
Wood/plastic composite	Per R507.3	Per R507.3

For SI: 1 inch = 25.4 mm

a. Maximum angle of 45 degrees from perpendicular for wood deck boards.

R507.5 Deck joists. Maximum allowable spans for wood deck joists, as shown in Figure R507.5, shall be in accordance with Table R507.5. Deck joist shall be permitted to cantilever a maximum of one-fourth of the actual, adjacent joist span.

R507.5.1 Lateral restraint at supports. Joist ends and bearing locations shall be provided with lateral restraint to prevent rotation. Where lateral restraint is provided by joist hangers or blocking between joists, their depth shall equal not less than 60 percent of the joist depth. Where lateral restraint is provided by rim joists, they shall be secured to the end of each joist with a minimum of (3)10d (3-inch x 0.128-inch) nails or (3)#10x3 inch (76 mm) long wood screws.

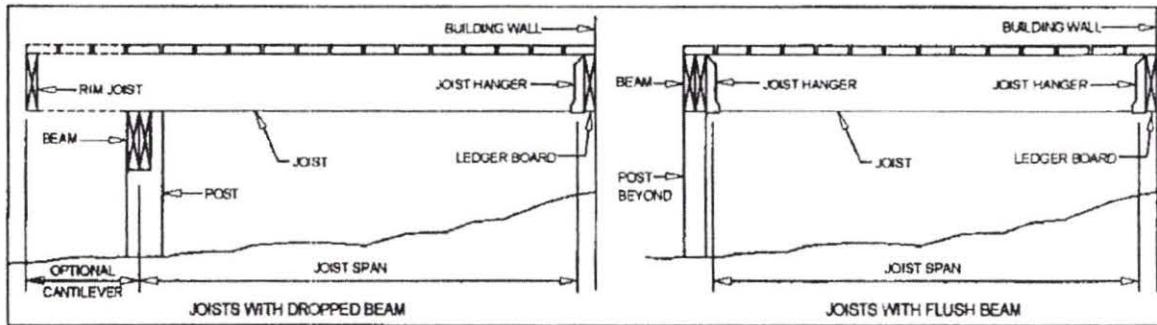


FIGURE R507.5
TYPICAL DECK JOIST SPANS

TABLE R507.5
DECK JOIST SPANS* AND CANTILEVERS* FOR COMMON LUMBER SPECIES

SPECIES ^b	SIZE	ALLOWABLE JOIST SPAN ^c			ALLOWABLE CANTILEVER ^{d,e}		
		Spacing of deck joists (inches)			Spacing of deck joists (inches)		
		12	16	24	12	16	24
Southern pine	2 x 6	9-11	9-0	7-7	1-3	1-4	1-6
	2 x 8	13-1	11-10	9-8	2-1	2-3	2-5
	2 x 10	16-2	14-0	11-5	3-4	3-6	2-10
	2 x 12	18-0	16-6	13-6	4-6	4-2	3-4
Douglas fir-larch ^f , hem-fir ^f , spruce-pine-fir ^f	2 x 6	9-6	8-4	6-10	1-2	1-3	1-5
	2 x 8	12-6	11-1	9-1	1-11	2-1	2-3
	2 x 10	15-8	13-7	11-1	3-1	3-5	2-9
	2 x 12	18-0	15-9	12-10	4-6	3-11	3-3
Redwood, western cedars, ponderosa pine ^g , red pine ^g	2 x 6	8-10	8-0	6-10	1-0	1-1	1-2
	2 x 8	11-8	10-7	8-8	1-8	1-10	2-0
	2 x 10	14-11	13-0	10-7	2-8	2-10	2-8
	2 x 12	17-5	15-1	12-4	3-10	3-9	3-1

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

a. Spans and cantilevers are given in feet and inches.

b. No. 2 grade with wet service factor.

c. Ground snow load, live load = 40 psf, dead load = 10 psf, L/Δ = 360.

d. Ground snow load, live load = 40 psf, dead load = 10 psf, L/Δ = 360 at main span, L/Δ = 180 at cantilever with a 220 pound point load applied to end.

e. Maximum allowable cantilever shall not exceed one-fourth of the actual joist span.

f. Includes incising factor.

g. Northern species with no incising factor.

R507.6 Deck beams. Maximum allowable spans for wood deck beams, as shown in Figure R507.6, shall be in accordance with Table R507.6. Beam plies shall be fastened with two rows of 10d (3-inch x 0.128-inch) nails minimum at 16 inches (406 mm) on center along each edge. Beams shall be permitted to cantilever at each end up to one-fourth of the beam span. Splices of multi-span beams shall be located at interior post locations.

R507.7 Deck joist and deck beam bearing. The ends of each joist and beam shall have not less than 1.5 inches (38 mm) of bearing on wood or metal and not less than 3 inches (76 mm) on concrete or masonry for the entire width of the beam. Joist framing into the side of a ledger board or beam

shall be supported by approved joist hangers. Joists bearing on a beam shall be attached to the beam to resist lateral displacement.

R507.7.1 Deck beam to deck post. Deck beams shall be attached to deck posts in accordance with Figure R507.7.1 or by other equivalent means capable to resist lateral displacement. Manufactured post-to-beam connectors shall be sized for the post and beam sizes. All bolts shall have washers under the head and nut.

Exception: Where deck beams bear directly on footings in accordance with Section R507.8.1.

FLOORS

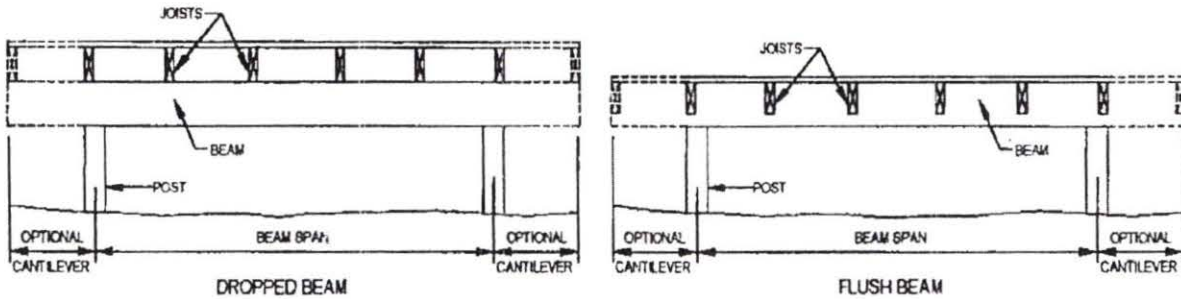


FIGURE R507.6
TYPICAL DECK BEAM SPANS

TABLE R507.6
DECK BEAM SPAN* LENGTHS^{a,c}

SPECIES ^d	SIZE ^a	DECK JOIST SPAN (feet) LESS THAN OR EQUAL TO:						
		6	8	10	12	14	16	18
Southern pine	2-2x6	6-11	5-11	5-4	4-10	4-6	4-3	4-0
	2-2x8	8-9	7-7	6-9	6-2	5-9	5-4	5-0
	2-2x10	10-4	9-0	8-0	7-4	6-9	6-4	6-0
	2-2x12	12-2	10-7	9-5	8-7	8-0	7-6	7-0
	3-2x6	8-2	7-5	6-8	6-1	5-8	5-3	5-0
	3-2x8	10-10	9-6	8-6	7-9	7-2	6-8	6-4
	3-2x10	13-0	11-3	10-0	9-2	8-6	7-11	7-6
Douglas fir-larch ^f , hem-fir, spruce-pine-fir, redwood, western cedars, ponderosa pine ^g , red pine ^g	3x6 or 2-2x6	5-5	4-8	4-2	3-10	3-6	3-1	2-9
	3x8 or 2-2x8	6-10	5-11	5-4	4-10	4-6	4-1	3-8
	3x10 or 2-2x10	8-4	7-3	6-6	5-11	5-6	5-1	4-8
	3x12 or 2-2x12	9-8	8-5	7-6	6-10	6-4	5-11	5-7
	4x6	6-5	5-6	4-11	4-6	4-2	3-11	3-8
	4x8	8-5	7-3	6-6	5-11	5-6	5-2	4-10
	4x10	9-11	8-7	7-8	7-0	6-6	6-1	5-8
	4x12	11-5	9-11	8-10	8-1	7-6	7-0	6-7
	3-2x6	7-4	6-8	6-0	5-6	5-1	4-9	4-6
	3-2x8	9-8	8-6	7-7	6-11	6-5	6-0	5-8
	3-2x10	12-0	10-5	9-4	8-6	7-10	7-4	6-11
	3-2x12	13-11	12-1	10-9	9-10	9-1	8-6	8-1

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

- a. Spans are given in feet and inches.
- b. Ground snow load, live load = 40 psf, dead load = 10 psf, $L/\Delta = 360$ at main span, $L/\Delta = 180$ at cantilever with a 220 pound point load applied at the end.
- c. Beams supporting deck joists from one side only
- d. No. 2 grade, wet service factor.
- e. Beam depth shall be greater than or equal to depth of joists with a flush beam condition.
- f. Includes incising factor.
- g. Northern species with no incising factor.

R507.7 Deck joist and deck beam bearing. The ends of each joist and beam shall have not less than 1.5 inches (38 mm) of bearing on wood or metal and not less than 3 inches (76 mm) on concrete or masonry for the entire width of the beam. Joist framing into the side of a ledger board or beam shall be supported by approved joist hangers. Joists bearing on a beam shall be attached to the beam to resist lateral displacement.

R507.7.1 Deck beam to deck post. Deck beams shall be attached to deck posts in accordance with Figure R507.7.1 or by other equivalent means capable to resist lateral displacement. Manufactured post-to-beam connectors shall be sized for the post and beam sizes. All bolts shall have washers under the head and nut.

Exception: Where deck beams bear directly on footings in accordance with Section R507.8.1.

R507.8 Deck posts. For single level wood-framed decks with beams sized in accordance with Table R507.6, deck post size shall be in accordance with Table R507.8.

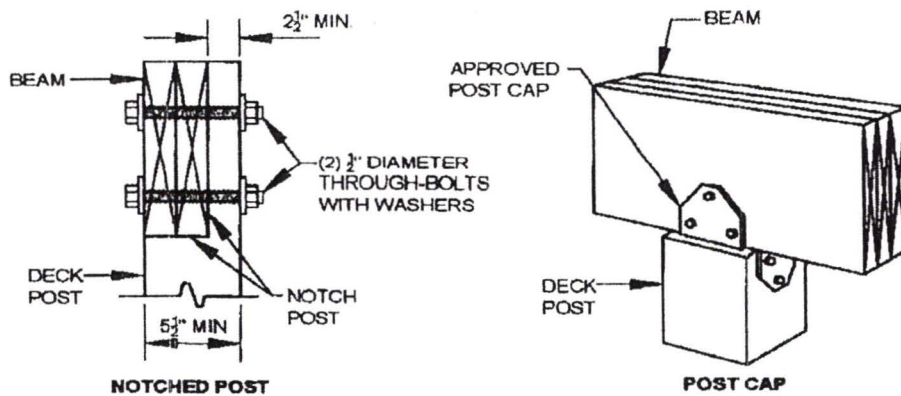
**TABLE R507.8
DECK POST HEIGHT* (feet)**

DECK POST SIZE	MAXIMUM HEIGHT*
4x4	8
4x6	8
6x6	14

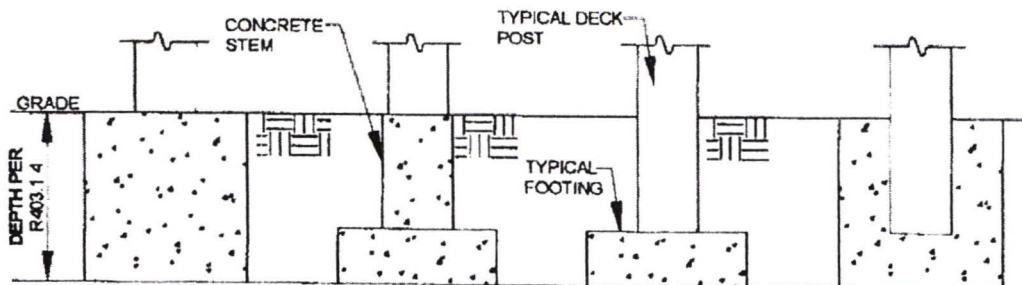
For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

a. Measured to the underside of the beam.

R507.8.1 Deck post to deck footing. Posts shall bear on footings in accordance with Section R403 and Figure R507.8.1. Posts shall be restrained to prevent lateral displacement at the footing. Lateral restraint shall be provided by manufactured connectors installed in accordance with the manufacturers' installation instructions or by a minimum post embedment of 12 inches (304.8 mm) in surrounding soils or concrete piers.



**FIGURE R507.7.1
DECK BEAM TO DECK POST**



**FIGURE R507.8.1
TYPICAL DECK POSTS TO DECK FOOTINGS**

APPEAL NOTICE OF VIOLATION

**CONTRACTOR: Kebco Enterprises, Inc.
c/o Kenneth Bullock
PO Box 6749
Chesapeake, Virginia 23323**

**LOCATION: 4281 Cole Avenue
Suffolk, Virginia 23432**

**TAX MAP: 13A*JAMES*18
304529700**

**OWNER: Ashley Grant and Anthony Grant, Jr.
4281 Cole Avenue
Suffolk, Virginia 23432**

STATEMENT OF REASON FOR APPEAL

- Client objects that the building permit was issued according to the 2012 Edition of the Virginia Residential Code. Client agrees the permit was issued under the 2009 Edition of the Virginia Residential Code.
- As of November 30, 2016 Anthony Grant instructed Kebco Enterprises, Inc. to not come back to their home.
- This board has no jurisdiction because Anthony Grant did not purchase from Kebco Enterprises, Inc., therefore, Anthony Grant and Kebco Enterprises, Inc. have no privity of contract nor contractual obligations. Anthony Grant has no standing to bring any violation against Kebco Enterprises, Inc.
- Pursuant to Section 115.5 of the 2009 Virginia Construction Code the ownership of this property has been transferred and the original owner owns 50% or less and therefore the Notice of Violation fails.

1. R401.3 appeals because it involved a minimal fix. Mr. Grant had already signed off on this issue.
2. R905.1 appeals because the right rear roof of hip was properly installed and passed initial inspection.
3. R905.2.1 appeals because the right rear roof of hip was properly installed and passed initial inspection.
4. R703.11.1 appeals because per manufactures information the vinyl is installed properly.
5. R703.8 appeals because the flashing is around the door area. Note Susan Gardner's inspection. There is flashing on the front porch on the overhang per inspection from Stevens Roofing provided by Mr. Grant.
6. R502.6 appeals because shims were installed where needed per Susan Gardner's inspection in crawl space.
7. R606.6.1 appeals because all repairs were performed on all pier caps per Susan Gardner's inspection in crawl space.
8. P2605.1 appeals because all piping was installed properly.
9. R602.3 appeals because Mr. Grant signed off on this as being sufficient when Mr. Stokes did the initial inspection.
10. R403.1.6 appeals because the corrections were made and foundation anchor straps were installed correctly per engineer requirements.

SPECIFIC RELIEF SOUGHT

That Kebco Enterprises, Inc. states that this Notice of Violation is dismissed per my statement of reason for appeal.

Additional Documents
And Written Arguments
Submitted By
The City of Suffolk

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**CITY OF SUFFOLK, VIRGINIA
OFFICE OF THE CITY ATTORNEY**

P. O. BOX 1858, SUFFOLK, VA. 23439-1858
(757) 514-7130 FAX: (757) 514-7149

HELIVI L. HOLLAND
CITY ATTORNEY

WILLIAM E. HUTCHINGS, JR.
DEPUTY CITY ATTORNEY

KARLA D. CARTER
ASST. CITY ATTORNEY

KALLI L. JACKSON
ASST. CITY ATTORNEY

MINNA SANDWICH
ASST. CITY ATTORNEY

SHONDA R. CARROLL
PARALEGAL ADMIN.

June 8, 2018

SUBMITTED VIA EMAIL to travis.luter@dhcd.virginia.gov

W. Travis Luter Sr., C.B.C.O.
Assistant Secretary to the State Building Code Technical Review Board
Department of Housing & Community Development
Division of Building & Fire Regulation
State Building Codes Office
600 East Main Street, Suite 300
Richmond, Virginia 23219
(804) 371-7163

RE: Appeal of Kebco Enterprises, Inc. to State Review Board (Appeal No. 18-03)
Address: 4281 Cole Avenue, Suffolk

Dear Mr. Luter,

Attached please find the City of Suffolk's Response to the Review Board Staff Document. Also attached are the following supplemental documents to be added to the Review Board record in this matter:

1. Copy of the U.S. postal service certified mail receipt green card that provides proof of delivery of the City appeals board resolution to Kenneth Bullock on February 7, 2018, and
2. Printout of timeanddate.com webpage showing date calculation for Review Board appeal deadline of February 28, 2018.

Sincerely,

Kalli L. Jackson
Assistant City Attorney

Attachments

cc: Alexander H. Bell, Esq. for Anthony and Ashley Grant (via email)
Christopher H. Faulk, Esq. for Kebco Enterprises, Inc. (via email)

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD
(REVIEW BOARD)
(For Determination of Whether to Dismiss as Untimely)

IN RE: Appeal of KEBCO Enterprises, Inc. – Kenneth Bullock
Appeal No. 18-03

CITY OF SUFFOLK’S RESPONSE TO REVIEW BOARD STAFF DOCUMENT

Additions, Corrections, and Clarifications

Paragraph 2: In May of 2017, the City PCD hired an independent, third-party home inspector, Joseph E. Barbeau Jr., to inspect the Cole Avenue home. Mr. Barbeau’s inspection resulted in a written Third Party Inspection Report on 4281 Cole Avenue, Suffolk, VA dated May 10, 2017. Based on Mr. Barbeau’s inspection report, the City PCD issued a notice of violation to KEBCO dated May 23, 2017, citing twelve violations.

Paragraph 3: Legal counsel was not present for either party at the November 13, 2017 City appeals board hearing. A copy of the U.S. postal service certified mail receipt green card is provided with this response. The green card shows that Mr. Bullock signed for receipt of the City appeals board resolution on February 7, 2018.

Argument

1. KEBCO’s appeal to the Review Board should be dismissed as untimely because it was filed more than 21 calendar days after Mr. Bullock received the City appeals board resolution by certified mail. The U.S. postal service certified mail receipt green card shows that Mr. Bullock received the City appeals board resolution on February 7, 2018. In accordance with section 119.7 of the Virginia Construction Code, the City appeals board resolution contains the following wording:

BE IT FURTHER RESOLVED that any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, and (804) 371-7150.

Thus, KEBCO was fully informed and aware of the deadline and procedure for appeal to the Review Board. Adding 21 days from February 7, 2018, results in an appeal deadline to the Review Board of February 28, 2018. KEBCO submitted an application for appeal to the Review Board with a certification of service date of March 2, 2018, two days after the Review Board appeal deadline of February 28, 2018. Allowing untimely appeals to be heard is in direct conflict with the VCC and would promote unfairness and inconsistency in the Commonwealth's administrative hearing procedures.

Respectfully Submitted,

CITY OF SUFFOLK, VIRGINIA

By:  Of Counsel

Kalli L. Jackson
Assistant City Attorney
CITY OF SUFFOLK
442 West Washington Street, Suite 2117
Suffolk, VA 23434
Phone: (757) 514-7130
Fax: (757) 514-7149
V.S.B. No.: 82974

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Joshua and Makiba Gaines
Appeal No. 18-05

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VIRGINIA:

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

IN RE: Joshua and Makiba Gaines
Appeal No. 18-05

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. On February 7, 2017, the City of Norfolk Department of Neighborhood Development (City), in enforcement of the Virginia Property Maintenance (VMC), issued a notice of violation to Mr. Gaines for rental property located at 2410 West Avenue. The notice outlined a number of VMC violations and contained a statement of right of appeal. One of the violations cited was for the lack of a heating system.

2. The City re-inspected the property on February 14, 2017 and issued and affixed a placard on the building on February 15, 2017 for the lack of a functioning heating system. The placard identified the building as unsafe or unfit for human habitation. The tenant was relocated.

3. Mr. Gaines obtained a permit from the City building permitting department under the Virginia Construction Code (VCC), on March 3, 2017, to install a gas space heater. An inspection was conducted by the City on March 20, 2017 and the installation was disapproved due to the use of an unvented heater for the sole source of heat. Mr. Gaines also received a copy of the placard on March 20, 2017.

4. Mr. Gaines filed an appeal to the City of Norfolk Local Board of Appeals (local board) on March 21, 2017.

5. The City building official issued a letter dated March 20, 2017 to the Gaines' stating that the appeal filed that day was denied due to not being filed with fourteen days after receipt of the February 7, 2017 notice of violation. However, on March 21, 2017, the Gaines' filed an appeal

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application to the local board and paid the appeal fee. Later, on April 10, 2017, the Gaines' filed an appeal with the Review Board. In review of the application to the Review Board, staff noted that there was no decision by the local board, so the building official was contacted and the City agreed to have the local board hear the Gaines' appeal.

7. The local board conducted a hearing in June of 2017 and dismissed the Gaines' appeal as untimely. The Gaines' filed a new application for appeal to the Review Board after receipt of the local board's decision.

8. Review Board staff conducted an informal fact-finding conference in December of 2017, attended by the Gaineses, the City's building official, City Property Maintenance Department representatives, and the City's legal counsel. At the conference, the Gaineses acknowledged that no appeal right existed from the February 7, 2017 notice of violation, and that their appeal was of the issuing of the placard and the applications of the code associated with it. The Gaines' stated that they did not receive notice of the placard until March 20, 2017. The City's legal counsel advised that the Gaines' had filed court action for an injunction prior to March 20, 2017 and were therefore aware of the placard more than fourteen days prior to filing the appeal to the local board. The Gaines' indicated that they did not believe being aware of the placard was considered to be the receipt of the application of the code and that they had never received proper notice of the determination that their rental property was unsafe or unfit for human habitation. The Gaineses further stated that they believed that no violation of the VMC existed relative to the heat issue since the faulty heating system had been removed and there was no longer a tenant and the VMC provision addressing heat only applies if there is a lease agreement to provide heat.

9. In January of 2018, the Review Board, at a preliminary hearing, found the appeal of the February 15, 2017 notice to be timely and remanded the appeal back to the local board for a hearing on the merits of the appeal.

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10. The local board conducted a hearing on May 14, 2018 and denied the Gaines appeal. The Gaines' filed a new application for appeal to the Review Board after receipt of the local board's decision.

11. This staff document along with a copy of all documents submitted will be sent to the parties and opportunity given for the submittal of additions, corrections or objections to the staff document, and the submittal of additional documents or written arguments to be included in the information distributed to the Review Board members for the appeal hearing before the Review Board.

Suggested Issue for Resolution by the Review Board

1. Whether to overturn the decision of the Property Maintenance Official and the local appeals board that violations of the VMC Sections 603.1 (Mechanical appliances), 605.1 (Installation), and 105 (Unsafe structures or structures unfit for human occupancy) exist and that the placarding of the structure was proper.

2. Whether to overturn the decision of the Property Maintenance Official and the local board requiring the Gaineses to install a heating system.

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Basic Documents

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February 7, 2017

Gaines, Joshua C
Po Box 8393
Norfolk VA 23503-0393

Inspection No: INS-0014745-17
Property Address: 2410 WEST AVENUE

NOTICE OF VIOLATION

Dear: Gaines, Joshua C

As part of the city-wide effort to maintain the quality of existing properties located in the City of Norfolk, an inspection has been made of your property at the referenced address. Conditions, which violate the Virginia Maintenance Code (VMC) are listed on the following page(s).

In accordance with the provisions of the VMC you are hereby served notice to correct each of the violations by the dates outlined in the following page(s).

Extension(s) may be granted upon written request submitted to your Inspector at **Neighborhood Quality; 401 Monticello Ave., 1st Floor Norfolk Virginia 23510, by Email or Fax at 664-6898** before your compliance date.

You may be required to secure building or building trade permits for repairs referenced in this notice. Permits are issued at the Development Services Center located at 810 Union Street, 1st floor, Norfolk City Hall.

You have the right to appeal the Code Official's decision concerning the VMC pursuant to Part III, Section 106.5 of the VMC. The appeal must be filed with the appropriate authority in writing, with a filing fee within fourteen (14) days of the Code Official's decision.

We look forward to your cooperation and compliance with the property maintenance provisions of the Virginia Maintenance Code.

Should you have questions, please call.

Sincerely,
Joseph Johnson
Codes Specialist
(757) 664-6581
joseph.johnson@norfolk.gov

Inspection No: INS-0014745-17
Address: 2410 WEST AVENUE

Section 603.1 -- To be corrected by: February 13, 2017

603.1 Mechanical And Electrical Requirements-Mechanical Equipment

-All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

-Abatement Requirement:

-Additional Details: Repair or replace HVAC system. Failure to have a working heating system could result in the property being Placarded.

Inspection No: INS-0014745-17
Address: 2410 WEST AVENUE

Section 605.1 -- To be corrected by: February 13, 2017

605.1 Mechanical And Electrical Requirements-Electrical Equipment

-All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.

-Abatement Requirement:

-Additional Details: Repair electrical system as needed to ensure all lights and outlets are operable. Repair breaker panel box as needed.

Inspection No: INS-0014745-17
Address: 2410 WEST AVENUE

Section 504.1 -- To be corrected by: March 7, 2017

504.1 General Plumbing Systems

-All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

-Abatement Requirement:

-Additional Details: 1. Repair leaking kitchen drain.
2. Unclog tub drain.

Inspection No: INS-0014745-17
Address: 2410 WEST AVENUE

Section 704.2 -- To be corrected by: March 7, 2017

704.2 Fire Safety Requirements -Fire Protection Systems

-Single or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and in dwellings not regulated in Group R occupancies, regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

401 Monticello Ave, 1st Floor Norfolk VA 23510
Phone: 757-664-6500 Fax: 757-664-6898

2. In each room used for sleeping purposes.
3. In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level. Single or multiple-station smoke alarms shall be installed in other groups in accordance with the International Fire Code.

-Abatement Requirement:

-Additional Details: Replace smoke detector.

Inspection No: INS-0014745-17
Address: 2410 WEST AVENUE

Section 305.4 -- To be corrected by: March 7, 2017

305.4 General Requirements-Interior Structure

-Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

-Abatement Requirement:

-Additional Details: Repair floor throughout as needed to include kitchen, bathroom and carpets.

Inspection No: INS-0014745-17
Address: 2410 WEST AVENUE

Section 304.15 -- To be corrected by: March 7, 2017

304.15 General Requirements-Exterior Structure

-All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units and sleeping units shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 702.3.

-Abatement Requirement:

-Additional Details: Repair front door and jamb. Replace as needed.

Inspection No: INS-0014745-17
Address: 2410 WEST AVENUE

Section 304.13 -- To be corrected by: March 7, 2017

304.13 General Requirements-Exterior Structure

-Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

-Abatement Requirement:

-Additional Details: Repair or replace all windows to ensure they work properly.

Inspection No: INS-0014745-17
Address: 2410 WEST AVENUE

Section 304.2 -- To be corrected by: March 7, 2017

304.2 General Requirements-Exterior Structure

401 Monticello Ave, 1st Floor Norfolk VA 23510
Phone: 757-664-6500 Fax: 757-664-6898

-All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

-Abatement Requirement:

-Additional Details: Repair or replace siding, fascia, cornice, etc as needed.

Inspection No: INS-0014745-17

Address: 2410 WEST AVENUE

Section 302.7 -- To be corrected by: March 7, 2017

302.7 General Requirements-Exterior Property Areas

-All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

-Abatement Requirement:

-Additional Details: Repair, replace or remove damaged fence.

Inspection No: INS-0014745-17

Address: 2410 WEST AVENUE

Section 304.10 -- To be corrected by: March 7, 2017

304.10 General Requirements-Exterior Structure

-Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

-Abatement Requirement:

-Additional Details: Repair or replace damaged steps.



February 15, 2017

Received 03-21-17

Gaines, Joshua C
Po Box 8393
Norfolk VA 23503-0393

NOTICE OF VIOLATION

Inspection No: INS-0014745-17
Property Address: 2410 WEST AVENUE

Dear: Gaines, Joshua C

A re-inspection of your referenced property has been conducted. The Virginia Maintenance Code violations, which render your building, structure unit unfit or unsafe, have not been corrected.

In accordance with Part III, Section 105.0 of the Uniform Statewide Building Code (USBC), the Code Official has placarded the building, structure, or unit as unsafe or unfit for human habitation or use as of February 15, 2017. Re-occupancy may not occur without express permission of the Code Official or his designee. Occupancy in a building, structure or unit placarded as an unfit or unsafe structure or removal of the placard is a criminal offense punishable by jail time and/or fine.

Please contact Joseph Johnson, Codes Specialist at (757) 664-6581 if you have any questions.

Sincerely,

Sherry Johnson, Division Head
Division of Neighborhood Quality
Department of Neighborhood Development



Norfolk

Department of Planning & Community Development

Division of Building Safety
 Development Services Center
 810 Union Street/ First Floor
 Norfolk, VA 23510-1914
 Phone: (757) 664-6565

The Virginia Uniform Statewide Building Code, Part I, Section 119.5 states in part: Right of appeal; filing of appeal application. Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA.

Appeals of Building Official's decision must be submitted within 30 calendar days of receipt of decision

The Virginia Uniform Statewide Building Code, Part III, Section 106.5 states in part: Right of appeal; filing of appeal application. Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA.

Appeals of the Maintenance Code Official must be submitted within 14 calendar days of receipt of decision

I (we)/name(s) Joshua and Makiba Gaines
 (mailing address) 7480 Nugent St. Norfolk Va. 23505
P.O. Box 2502, Va Beach, Va. 23452

respectfully request that the Local Board of Building Code Appeals review the decision made by the Norfolk Building Official/Norfolk Maintenance Code Official concerning,

Property address on which hearing is based:

2410 West Avenue, Norfolk, Va. 23505

My interest in the property is:

Owner Contractor Owner's Agent Other (Explain) _____

Application for appeal must be based on one of the following reasons:

(Check one)
 Decision: 02/14/17 [received 03-21-17]
 (Copy must be submitted)

Refusal of the Building Official to grant a modification on the provisions of the USBC, Part I, Description of decision(s) appealed:

Appeal of placard under 605.1 + 605.1; appeal
refusal to inspect; appeal denied
of notice of violation; appeal the decision, that
requires us to install a heating
system

(Attach the decision of the Building Official/Maintenance Code Official and any other pertinent documents)

Applicant signature: [Signature] Date: 3-21-17

Note: Please make check payable to Norfolk City Treasurer in the amount of seventy-five (\$75.00) dollars for processing requested appeal. Due at time of application.

Six (6) complete copies of plans and appeal data must be submitted with six (6) copies of application.

Applicant will be notified in writing of the scheduled appeal date.

Makibam@aol.com

Local Board of Building Code Appeals Resolution

WHEREAS, the City of Norfolk Local Board of Appeals is duly appointed to resolve disputes arising out of enforcement of the Virginia Uniform Statewide Building Code; and

WHEREAS, an appeal has been filed and brought to the attention of the board of appeals; and

WHEREAS, a hearing has been held to consider the aforementioned appeal; and

WHEREAS, the board has fully deliberated this matter; now, therefore, be it

RESOLVED, That the matter of

Appeal Date: March, 21, 2017

Inspection No: INS-0014745-17

Property Address: 2410 West Avenue, Norfolk, Virginia

IN RE: Joshua and Makiba Gaines v. Norfolk Property Maintenance Official

The appeal is hereby **denied**, for the reasons set out below:

Subsequent to Virginia State Technical Review Board Hearing, Appeal No. 17-11, the Appeal by Joshua and Makiba Gaines vs. the Norfolk Property Maintenance Official was heard on its merits by this Board. Upon hearing this appeal as presented by the Gaines' and the City of Norfolk, Property Maintenance Official, this board hereby denied the appeal as follows:

1. Placarding the structure per 2012 Virginia Maintenance Code Sections 603.1 and 605.1. Denied
2. City refusal to re-inspect. Denied
3. Decision that requires us (Mr. and Mrs. Gaines) to install a heating system. Denied

Hearing Date: May 14, 2018

Signature 
Sheldon Leavitt, Chairman of Norfolk Local Board of Appeals

Note: Any person who has a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to such board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, VA 23219, (804) 371-7150.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

- Uniform Statewide Building Code
- Statewide Fire Prevention Code
- Industrialized Building Safety Regulations
- Amusement Device Regulations

Appealing Party Information (name, address, telephone number and email address):

Opposing Party Information (name, address, telephone number and email address of all other parties):


Additional Information (to be submitted with this application)

- Copy of enforcement decision being appealed
- Copy of record and decision of local government appeals board (if applicable and available)
- Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 201_, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant:  _____

Name of Applicant: _____
(please print or type)

VIRGINIA: THE VIRGINIA STATE TECHNICAL REVIEW BOARD

MAKIBA GAINES
JOSHUA GAINES,
Appellants/Petitioners

v.
CITY OF NORFOLK,
and
SHERRY JOHNSON, CODE OFFICIAL
Appellees/Respondents

STATEMENT OF SPECIFIC RELIEF SOUGHT

The Gaineses appeared before the Norfolk LBBCA on May 14, 2018, pursuant to remand of their substantive claims from the Virginia State Technical Review Board. The Gaineses presented the following three claims for appeal to the LBBCA: (1) the Norfolk Code Official unlawfully placarded the property on Feb. 15, 2017 under VMC §§ 603.1, 605.1, and 202 because the property was not occupied nor was the lack of heating in the structure a threat to the public; (2) the City of Norfolk failed to officially re-inspect the property and issue a new notice of violation and correction notice after the Gaineses ameliorated defects previously cited under §§ 603.1 and 605.1; and (3) the City of Norfolk erred when it demanded the Gaineses to install a heating system at an unoccupied and vacant property. The appeal to the LBBCA was denied on all three claims. The Gaineses received a copy of the LBBCA's resolution on May 17, 2018. They now appeal all three claims to the State Technical Review Board. The Gaineses request removal of the placard, reinspection performed by the code official under the Maintenance Code; and interpretation regarding the applicability of the Code's heating requirements to unoccupied properties. The Gaineses do not believe they were afforded a fair and impartial hearing before the LBBCA and would like to present their claims of unfair treatment in the LBBCA hearing to the State Board. May 17, 2018

Respectfully Submitted,

Joshua and Makiba Gaines
PO Box 2862
Virginia Beach, Virginia, 23452
makibam@aol.com

(Page left blank intentionally)

**Documents Submitted
By Joshua and Makiba Gaines**

(Page left blank intentionally)

M Gaines

From: Hall, Cynthia <cynthia.hall@norfolk.gov>
Sent: Thursday, February 23, 2017 3:44 PM
To: Makiba
Subject: RE: Placard

It is permissible for the contractor to enter to make the required repairs. Once the repairs are done, please contact the inspector for the inspection. Thanks.

From: Makiba [mailto:makibam@aol.com]
Sent: Thursday, February 23, 2017 1:12 PM
To: Hall, Cynthia <cynthia.hall@norfolk.gov>
Subject: Placard

Hello,

I am in a never ending cycle with the City, and once again ask you to remove the notice from the door of 2410 West Ave. Michael and Sons refused to enter because of the threat of criminal punishment. The code official did not cite any placard-able offense under the USBC. The City has absolutely no basis to restrict entry to the premises, and is causing irreparable damages. Please remove.

Thanks,

Sent from my iPhone

M Gaines

From: Makiba Gaines <makibam@aol.com>
Sent: Friday, March 17, 2017 2:50 PM
To: Joseph.Johnson@norfolk.gov
Subject: Re: Please provide

Thank you Mr. Johnson.

-----Original Message-----

From: Johnson, Joseph <Joseph.Johnson@norfolk.gov>
To: Makiba <makibam@aol.com>
Cc: Johnson, Sherry <sherry.johnson@norfolk.gov>; Hall, Cynthia <cynthia.hall@norfolk.gov>; Jackson, Christina <Christina.Jackson@norfolk.gov>
Sent: Fri, Mar 17, 2017 2:48 pm
Subject: RE: Please provide

As per your request for a meeting prior to the mechanical inspection, I can meet with you on Monday morning at 10:00. One of our mechanical inspectors may come along as a courtesy. I will bring along a copy of the notice you requested at that time.

From: Makiba [<mailto:makibam@aol.com>]
Sent: Friday, March 17, 2017 10:43 AM
To: Johnson, Joseph <Joseph.Johnson@norfolk.gov>; Johnson, Sherry <sherry.johnson@norfolk.gov>; Hall, Cynthia <cynthia.hall@norfolk.gov>
Subject: Please provide

Hello,

I am writing for a copy of the final decision you issued on 2410 West Ave. We have a copy of notice of violation dated for February 8th, but we are not in receipt of the code official's final decision to placard. Please provide the letter that advises us that our property was/is being placarded, and that sets out the reasons for the same.

Thanks,

Joshua and Makiba Gaines

M Gaines

From: Makiba <makibam@aol.com>
Sent: Monday, March 20, 2017 10:55 AM
To: cynthia.hall@norfolk.gov; sherry.johnson@norfolk.gov; joseph.johnson@norfolk.gov
Subject: Re-inspection

Hello,

Today, in a recorded meeting with Inspector Joseph, we finally received a copy of your notice of placard dated for February 15, 2017—one full month after its issuance. Please be advised that your department has both an accurate mailing and email address for us. Your codes specialist refused to speak to us directly, and requires that we send all correspondence by email, to his team leader and the City Attorney. He was made aware, upon re-inspection, that the old HVAC system previously cited under 603.1 and 605.1 was removed and replaced; it no longer has mechanical or electrical defects. He made a statement to my plumber that the current system was “unvented,” and unacceptable, but refused to write us a notice of violation so that we would know how to repair the same. I cannot repair the HVAC unit cited under 603.1. or 605.1 because it is no longer there, and must know, in writing, how to repair the current violation, if any. We require that you issue us a notice of violation for the re-inspection that occurred today so that we may have, in writing, proper instruction for remedy.

Thanks,

Joshua and Makiba Gaines
757-389-6563
Makibam@aol.com
7486 Hughart St.
Norfolk, Va. 23505

M Gaines

From: Makiba <makibam@aol.com>
Sent: Wednesday, March 22, 2017 2:00 PM
To: mayor@norfolk.gov; luanne.moye@norfolk.gov; cynthia.hall@norfolk.gov;
kenneth.alexander@norfolk.gov; bernard.pishko@norfolk.gov
Subject: Grievance

Dear Mayor Alexander and Mr. Pishko,

On 03/20/2017, a codes inspector re-inspected the premises at 2410 West Ave. for violations previously cited under 603.1 and 605.1 of the USBC/VMC. The inspector refused to issue a new notice of violation, upon re-inspection, even though he was made aware that the previous violations no longer existed. He did not remove the placard from the door. We appealed that decision to the LBBCA, and Cynthia Hall denied the appeal. Neither the code inspector, code official, nor City Attorney are responding to any of our calls or emails. We are asking for a new notice of violation, consistent with the March 20th re-inspection, that tells us exactly which code we are currently violating so that we can repair it. We are highly aggrieved and believe that we are being treated unfairly by the Cynthia Hall and some of the others she is advising.

Thanks,

Makiba and Joshua Gaines
757-389-6563



Department of City Planning
City of Norfolk
810 Union Street, Suite 500
Norfolk, VA 23510
757-664-4770 (O)
757-620-3630 (M)

Connect with us:

www.norfolk.gov



From: Makiba [<mailto:makibam@aol.com>]

Sent: Sunday, March 26, 2017 9:11 PM

To: Homewood, George <George.Homewood@norfolk.gov>; Johnson, Joseph <Joseph.Johnson@norfolk.gov>

Subject: Re-inspection 2410 West Ave

Hello Mr. Homewood,

I spoke to the City Attorney, Bernard Pishko, by email, and he advised that you could assist me with scheduling a re-inspection of our property at 2410 West Ave (he believes you head the entire department). The property was previously cited for some HVAC unit defects under 603.1 and 605.1. We have since removed the unit. We have spent money on repairs, only to later determine that the repair was insufficient. We need to know which code we are currently violating in order to make the repair. Mr. Johnson, who is copied in this email, came to the property on the 20th but refused to issue a new notice of violation. Mr. Johnson stated to me that we must install an HVAC unit, but refuses to put it in writing (even though many homes have other heating systems). We can be contacted at 757-389-6563.

Thanks,

M Gaines

From: Makiba <makibam@aol.com>
Sent: Monday, March 27, 2017 1:47 PM
To: 'Fortner, Richard'; 'Homewood, George'
Cc: 'Hall, Cynthia'; 'Rogers, James'; 'Johnson, Sherry'; 'Johnson, Joseph'; 'Newcomb, Leonard'
Subject: RE: Re-inspection 2410 West Ave

Hello,

We understand what is required for the permit (Virginia Residential Code), but we have not been provided proper written guidance about the codes inspection (Virginia Maintenance Code). The house currently has no heating system. Inspector Johnson stated that I need to install a new central ac/heating system, even though many other habitable homes have alternative heating sources, but refused to provide the same in writing. Installing a vented heater will pass the permit inspection, but I do not know if it will help to pass codes. We need a person from codes to tell us what we can do now to pass a codes inspection.

Thanks,

From: Fortner, Richard [mailto:Richard.Fortner@norfolk.gov]
Sent: Monday, March 27, 2017 1:21 PM
To: Homewood, George <George.Homewood@norfolk.gov>; Makiba <makibam@aol.com>
Cc: Hall, Cynthia <cynthia.hall@norfolk.gov>; Rogers, James <James.Rogers@norfolk.gov>; Johnson, Sherry <sherry.johnson@norfolk.gov>; Johnson, Joseph <Joseph.Johnson@norfolk.gov>; Newcomb, Leonard <Leonard.Newcomb@norfolk.gov>
Subject: RE: Re-inspection 2410 West Ave

George,

Maybe I can help. Mr. Gaines obtained a homeowner's permit for a gas space heater and gas line on March 3, 2017. They called for an inspection and my inspector disapproved it on March 20th because an unvented space heater cannot be used as the sole source of heat. See notes below from ePermits. With all the other issues going on, the fact that N.D. has it in court, etc. is adding to the confusion.

Disapproved3/20/2017 10:29 AM Per International Residential Code G-2445.2 one or more unvented room heaters shall not be used as the sole source of comfort heating in a dwelling unit.

Rick Fortner, CBO, CFM
Building Commissioner


Department of City Planning,
Building Safety Division
401 Monticello Ave, First Floor
Norfolk, VA 23510
757-664-6511 office
757-620-2667 mobile

Connect with us:

M Gaines

From: Hall, Cynthia <cynthia.hall@norfolk.gov>
Sent: Wednesday, March 29, 2017 11:34 AM
To: Makiba
Cc: Homewood, George; Pishko, Bernard; Rogers, James; Johnson, Sherry; Johnson, Joseph; Fortner, Richard; Newcomb, Leonard
Subject: 2410 West Ave.

An unvented room heater is not authorized. If you provide details on what heating system you desire to install, other than an unvented room heater, city staff will advise you if it is an appropriate system. Permits and inspections will need to be obtained. Thanks.

From: Johnson, Sherry
Sent: Wednesday, March 29, 2017 11:19 AM
To: Hall, Cynthia <cynthia.hall@norfolk.gov>
Subject:

The specific Virginia Maintenance code 603.1 violation will be satisfied when an approved sole source heater has been inspected approved and released under permit M17-0067

See below for corresponding Code sections.

Permit Inspection results for M17-0067 3/20/2017 for 2410 West Ave indicate International Residential Code G-2445.2 one or more unvented room heaters shall not be used as the sole source of comfort heating in a dwelling unit.

Property located at 2410 West Ave

603.1 Mechanical and Electrical requirements- Mechanical Equipment Cited in Notice 2/12/2017 states

All Mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition and shall be capable of performing the intended function

Additional Detail: Repair or replace HVAC system. Failure to have working heating system could result in the property being placarded.

Sherry Johnson
Property Maintenance Official
Division Head for Neighborhood Quality


Department of Neighborhood Development
401 Monticello Ave
Norfolk, VA 23509
757-664-6563 | 757-376-7117 mobile

Connect with us:
www.norfolk.gov

M Gaines

From: Makiba <makibam@aol.com>
Sent: Monday, April 3, 2017 11:57 PM
To: Hall, Cynthia
Cc: Homewood, George; Pishko, Bernard; Rogers, James; Johnson, Sherry; Johnson, Joseph; Fortner, Richard; Newcomb, Leonard
Subject: Re: 2410 West Ave.

Hello,

I asked the City for a re-inspection of the property at 2410 West Ave. in accordance with the USBC. My request was denied. Instead, I was advised to provide the City with information about the heater I wanted to install. Although I dispute the City's authority to require such an action, I will provide it because I have no other choice. The heating unit is listed as "Williams 2001622A Enclosed Front Vented Hearth Heater - Natural Gas - High Altitude."

Thanks,

Sent from my iPhone

On Mar 29, 2017, at 11:33 AM, Hall, Cynthia <cynthia.hall@norfolk.gov> wrote:

An unvented room heater is not authorized. If you provide details on what heating system you desire to install, other than an unvented room heater, city staff will advise you if it is an appropriate system. Permits and inspections will need to be obtained. Thanks.

From: Johnson, Sherry
Sent: Wednesday, March 29, 2017 11:19 AM
To: Hall, Cynthia <cynthia.hall@norfolk.gov>
Subject:

The specific Virginia Maintenance code 603.1 violation will be satisfied when an approved sole source heater has been inspected approved and released under permit M17-0067

See below for corresponding Code sections.

Permit Inspection results for M17-0067 3/20/2017 for 2410 West Ave indicate International Residential Code G-2445.2 one or more unvented room heaters shall not be used as the sole source of comfort heating in a dwelling unit.

Property located at 2410 West Ave

603.1 Mechanical and Electrical requirements- Mechanical Equipment Cited in Notice 2/12/2017 states All Mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition and shall be capable of performing the intended function

Additional Detail: Repair or replace HVAC system. Failure to have working heating system could result in the property being placarded.

M Gaines

From: Makiba <makibam@aol.com>
Sent: Tuesday, April 4, 2017 12:02 AM
To: Hall, Cynthia
Cc: Homewood, George; Pishko, Bernard; Rogers, James; Johnson, Sherry; Johnson, Joseph; Fortner, Richard; Newcomb, Leonard
Subject: Re: 2410 West Ave.

Hello,

I changed my mind. **Williams 35,000 BTU/hr Monterey Top-Vent Gravity Wall Furnace Natural Gas Heater with Wall or Cabinet-Mounted Thermostat.**

Thanks,

Sent from my iPhone

On Apr 3, 2017, at 11:57 PM, Makiba <makibam@aol.com> wrote:

Hello,

I asked the City for a re-inspection of the property at 2410 West Ave. in accordance with the USBC. My request was denied. Instead, I was advised to provide the City with information about the heater I wanted to install. Although I dispute the City's authority to require such an action, I will provide it because I have no other choice. The heating unit is listed as "Williams 2001622A Enclosed Front Vented Hearth Heater - Natural Gas - High Altitude."

Thanks,

Sent from my iPhone

On Mar 29, 2017, at 11:33 AM, Hall, Cynthia <cynthia.hall@norfolk.gov> wrote:

An unvented room heater is not authorized. If you provide details on what heating system you desire to install, other than an unvented room heater, city staff will advise you if it is an appropriate system. Permits and inspections will need to be obtained. Thanks.

From: Johnson, Sherry
Sent: Wednesday, March 29, 2017 11:19 AM
To: Hall, Cynthia <cynthia.hall@norfolk.gov>
Subject:

The specific Virginal Maintenance code 603.1 violation will be satisfied when an approved sole source heater has been inspected approved and released under permit M17-0067

See below for corresponding Code sections.

M Gaines

From: Fortner, Richard <Richard.Fortner@norfolk.gov>
Sent: Tuesday, April 4, 2017 7:49 AM
To: Makiba; Hall, Cynthia
Cc: Homewood, George; Pishko, Bernard; Rogers, James; Johnson, Sherry; Johnson, Joseph; Newcomb, Leonard
Subject: RE: 2410 West Ave.

Good morning Makiba,

Joshua has an active mechanical permit, M17-00670. When you have replaced the furnace with one that you feel meets the code, you can request an inspection at any time. Inspections can be requested via our online portal (link below) and will be conducted the next business day.

<http://www.norfolk.gov/inspections>

Best regards,

Rick Fortner, CBO, CFM
Building Commissioner


Department of City Planning,
Building Safety Division
401 Monticello Ave, First Floor
Norfolk, VA 23510
757-664-6511 office
757-620-2667 mobile

Connect with us:
www.norfolk.gov



From: Makiba [mailto:makibam@aol.com]
Sent: Tuesday, April 04, 2017 12:02 AM
To: Hall, Cynthia <cynthia.hall@norfolk.gov>
Cc: Homewood, George <George.Homewood@norfolk.gov>; Pishko, Bernard <bernard.pishko@norfolk.gov>; Rogers, James <James.Rogers@norfolk.gov>; Johnson, Sherry <sherry.johnson@norfolk.gov>; Johnson, Joseph <Joseph.Johnson@norfolk.gov>; Fortner, Richard <Richard.Fortner@norfolk.gov>; Newcomb, Leonard <Leonard.Newcomb@norfolk.gov>
Subject: Re: 2410 West Ave.

Hello,

I changed my mind. **Williams 35,000 BTU/hr Monterey Top-Vent Gravity Wall Furnace Natural Gas Heater with Wall or Cabinet-Mounted Thermostat.**

M Gaines

From: Makiba <makibam@aol.com>
Sent: Tuesday, April 4, 2017 8:20 AM
To: Fortner, Richard
Cc: Hall, Cynthia; Homewood, George; Pishko, Bernard; Rogers, James; Johnson, Sherry; Johnson, Joseph; Newcomb, Leonard
Subject: Re: 2410 West Ave.

Hello,

I do not need an inspection with the mechanical inspector. Once again, we are very clear as to what the mechanical inspector requires. We have no clue how to proceed in the codes inspection, because the codes are not one in the same, and unlike the mechanical inspector, codes has refused to provide us a written document to tell us what's wrong. I'm not going to blindly install another system.

Thanks,

Sent from my iPhone

On Apr 4, 2017, at 7:48 AM, Fortner, Richard <Richard.Fortner@norfolk.gov> wrote:

Good morning Makiba,

Joshua has an active mechanical permit, M17-00670. When you have replaced the furnace with one that you feel meets the code, you can request an inspection at any time. Inspections can be requested via our online portal (link below) and will be conducted the next business day.

<http://www.norfolk.gov/inspections>

Best regards,

Rick Fortner, CBO, CFM
Building Commissioner

<image001.jpg>

**Department of City Planning,
Building Safety Division**
401 Monticello Ave, First Floor
Norfolk, VA 23510
757-664-6511 office
757-620-2667 mobile

Connect with us:

www.norfolk.gov

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From: Makiba [<mailto:makibam@aol.com>]
Sent: Tuesday, April 04, 2017 12:02 AM
To: Hall, Cynthia <cynthia.hall@norfolk.gov>
Cc: Homewood, George <George.Homewood@norfolk.gov>; Pishko, Bernard

M Gaines

From: Makiba <makibam@aol.com>
Sent: Friday, April 28, 2017 5:01 PM
To: kenneth.alexander@norfolk.gov; bernard.pishko@norfolk.gov; 'Hall, Cynthia'
Cc: margaret.kavanaugh@wtkr.com
Subject: 2410 West Ave

Hello,

I have been attempting to have the placard removed at 2410 West Ave. for quite some time. Our pleas have been unsuccessful—even though we ameliorated the problem cited on March 6th. I am now adding to my grievance and plea, the fact that Virginia law does not require heat in any unit after May 1, and renewing my request to have the placard removed on that date. We are continuing to incur damages as a result, and currently are not able to insure the property because of the placard (this is particularly disturbing and potentially damaging).

(Margaret I am including you here because this is the situation my wife told you about)

Thanks,
Joshua Gaines

M Gaines

From: Stone, Mary Lou <MaryLou.Stone@norfolk.gov>
Sent: Monday, May 1, 2017 9:17 AM
To: Makiba
Cc: margaret.kavanaugh@wtkr.com; Muse, Adisa; Alexander, Kenneth; Pishko, Bernard; Hall, Cynthia
Subject: RE: 2410 West Ave

Mr. Gaines,

The Mayor's office is in receipt of your email. However, since this is pending litigation, all questions and or concerns will need to be directed to Cynthia Hall in the City Attorney's office.

All the best,

Mary Lou Stone
Special Assistant to the Mayor



810 Union Street, Suite 1001
Norfolk, VA 23510
757-664-4679

Connect with us:

www.norfolk.gov



From: Makiba [mailto:makibam@aol.com]
Sent: Friday, April 28, 2017 5:01 PM
To: Alexander, Kenneth <Kenneth.Alexander@norfolk.gov>; Pishko, Bernard <bernard.pishko@norfolk.gov>; Hall, Cynthia <cynthia.hall@norfolk.gov>
Cc: margaret.kavanaugh@wtkr.com
Subject: 2410 West Ave

Hello,

I have been attempting to have the placard removed at 2410 West Ave. for quite some time. Our pleas have been unsuccessful—even though we ameliorated the problem cited on March 6th. I am now adding to my grievance and plea, the fact that Virginia law does not require heat in any unit after May 1, and renewing my request to have the placard removed on that date. We are continuing to incur damages as a result, and currently are not able to insure the property because of the placard (this is particularly disturbing and potentially damaging).

(Margaret I am including you here because this is the situation my wife told you about)

Thanks,
Joshua Gaines

M Gaines

From: Makiba <makibam@aol.com>
Sent: Friday, July 7, 2017 6:55 PM
To: 'Fortner, Richard'; 'Hall, Cynthia'; 'Alexander, Kenneth'
Cc: 'Pishko, Bernard'
Subject: RE: 2410 West Ave

Hello,

This email is in reference to 2410 West Ave. Michael and Sons, in addition to several other companies are refusing to enter the property with the tag on the door. We have provided you written documentation of this fact previously. Additionally, the companies are advising that even if they were able to enter the “unsafe structure” they would likely not work on the heating system during the summer months—we are also able to provide written documentation of this fact. We purchased the heating system, but because we are not skilled in installation ourselves, it is impossible to install heat at the vacant dwelling in its current state. We have called the “Team Leader” several times, as advised by Sherry Johnson, and she has failed to return our calls. Also, Ms. Hall, please provide the status of your research on our non-suit, as the clerk stated, the case is still active. Please be advised that we will continue to seek any and all channels of relief.

Veritably,
Makiba Gaines

M Gaines

From: Makiba <makibam@aol.com>
Sent: Thursday, May 10, 2018 1:57 PM
To: Fortner, Richard
Cc: Hall, Cynthia; Johnson, Sherry; Baker, Shelley H.
Subject: Re: Gaines Appeal

Mr. Fortner,

Do you also have a copy of the City's report made in accordance with Section 105.2? This appears not to be the notice of violation. If you do not have a copy, do you know where in the City I can retrieve a copy from today?

Thank you,

Sent from my iPhone

On May 10, 2018, at 1:17 PM, Fortner, Richard <Richard.Fortner@norfolk.gov> wrote:

Dear LBBCA members and Mrs. Gaines,

Attached for your records is a copy of the original Request for Appeal.

Best regards,

Rick Fortner, CBO, CFM
Building Commissioner

<image002.jpg>

Department of City Planning,
Building Safety Division
401 Monticello Ave, First Floor
Norfolk, VA 23510
757-664-6511 office
757-620-2667 mobile

Connect with us:

www.norfolk.gov

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Documents Submitted By the City of Norfolk

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IN THE CITY OF NORFOLK
LOCAL BOARD OF BUILDING CODE OF APPEALS

-----) -----
In re:) 2410 West Avenue
Joshua and Makiba Gaines)
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TRANSCRIPT OF PROCEEDINGS
Norfolk, Virginia
May 14, 2018

BEFORE:
Sheldon J. Leavitt, Chairman Pro Term
Donna M. Phaneuf
George Compo
Fadi E. Debbas
E.G. Middleton, III

ALSO PRESENT:
Cynthia B. Hall
Richard Fortner
Sherry Johnson
Makiba Gaines
Joshua Gaines

REPORTED BY: Christina McDowell

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E X H I B I T S

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1. Residential lease	18
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1 MR. FORTNER: I know some of you heard
2 Ms. Gaines' appeal the first time, and we made the
3 ruling and Mr. Leavitt missed it, so we can try to
4 get him up to speed soon. But Cindy Hall is our
5 City attorney. This is an appeal to the property
6 maintenance official, Ms. Sherry Johnson. I don't
7 know if you remember that.

8 And I don't want to steal your thunder, but
9 basically what happened was you ruled that it
10 wasn't -- Ms. Gaines' appeal wasn't filed in
11 accordance with the 14-day timeline. She appealed
12 to the State Technical Review Board, and they
13 overruled us and said that, yeah, we think it was
14 in the timeline and kicked it back to this board to
15 hear the original appeal, which was that she was
16 cited for not having heat in the home for tenants.

17 So that's where we are with it. I'm going to
18 turn it over to Cindy. Before I do, does anybody
19 want a water or anything? Water? Anybody want a
20 water?

21 MS. PHANEUF: I'm good.

22 MR. DEBBAS: I'll have a water later.

23 MR. FORTNER: Water. Okay.

24 Ms. Gaines, do you want a water?
25

1 (A break was taken.)

2

3 MS. HALL: Before we get started, the only
4 thing I'm going to hand out -- I think that Rick
5 sent this to you already, which is the actual
6 original appeal document that was filed by the
7 Gaineses.

8 MR. FORTNER: I'll hand those out. Here you
9 go.

10 MS. HALL: And just for the board's
11 information, there's multiple ground to the appeal.
12 I think the way I read it -- and maybe Ms. Gaines
13 could read it because I -- there were some words
14 there that I wasn't quite sure what they were
15 because the copy is not that dark. But I think
16 there's four grounds for appeal, but she'll have to
17 walk you through that. And those would be the
18 items that are before the board today on the merits
19 for the board to hear. So I'll let --

20 MS. GAINES: Okay. So as far as the issues
21 presented on our appeal, I think we can consolidate
22 these issues into three issues. We appeal the
23 placard being posted under 603.1 and 605.1, which
24 includes or encompasses the fact that the placard
25 should not have been issued under 202. We appeal

1 the code official's refusal to reinspect after
2 March 20th because we made some changes to the
3 property on March 6th, which we believe should have
4 been reinspected. The code official refused to
5 reinspect, and we would like to have it
6 reinspected.

7 We also appeal the decision that requires us
8 to install a heating system. That's partly based
9 on the fact that today is March 14th, and the USBC
10 doesn't require anybody to have heat after May 1st.
11 So those are the three issues that we'll be
12 appealing today.

13 MS. HALL: And if I could just for some
14 clarification on the last item. I believe
15 Ms. Gaines said she's appealing the decision that
16 requires us to install a heating system. Is that
17 the appeal or is -- she said it two different ways.
18 She indicated that whether or not she has to
19 provide heat. That's a different consideration.
20 So I'd ask her to advise the board if that -- which
21 one she's appealing.

22 MS. GAINES: I'm not -- I'm not sure I
23 understand your question, and if I can ask you to
24 rephrase it.

25 MS. HALL: The notice of violation that was

1 issued, which we'll get into shortly, indicates
2 that they have to have an operable heating system
3 at this address, but she just verbally indicated
4 that she was appealing the code officials -- or she
5 believes the code official ordered her to provide
6 heat to her tenants. There's two different issues.
7 So I'm not sure which issue she's going on.

8 MS. GAINES: I'm not understanding Ms. Hall's
9 perspective. We don't have tenants. We did not
10 have tenants when the house was placarded on
11 February 15th, 2017. The house was unoccupied,
12 completely vacant, and not under any lease
13 agreement.

14 So under Section 202 -- the reason why we
15 dispute that -- we claim that the property should
16 not have been placarded under that provision
17 whatsoever -- because the provision requires that
18 if the City finds the property unfit for human
19 occupancy, it has to be a danger to either the
20 health, safety, and welfare of the occupants of the
21 structure or the public. Because there were no
22 occupants of the structure, the lack of heating
23 would have to be a danger to the public, and we
24 don't believe that it was.

25 We also appealed -- and I'm sorry. I'm trying

1 to consolidate this because me and my husband have
2 to leave here at 2:15 to make sure we get our
3 children on time.

4 Once again, we made repairs to the property on
5 March 6th, and we asked for a reinspection, and the
6 code official refused to reinspect. And I think
7 that's basically it. You know, we came here today
8 with a few sentences for you guys. We don't really
9 have much on it.

10 Did you have anything, Babe?

11 I think we've said everything we need to say
12 unless you have any questions for us.

13 MR. DEBBAS: So you're intending to have a
14 tenant at that property?

15 MS. GAINES: Okay. Yes, we eventually do
16 intend to have a tenant at the property. So if we
17 can go back and discuss exactly what happened. It
18 was unoccupied at the time the placard was issued,
19 completely vacant. They placed a placard on the
20 dwelling.

21 When they placed the placard on the dwelling,
22 we asked Michael & Sons to go out -- we paid them a
23 \$90 fee to have them look at the property and see
24 how we could go about repairing the heat. Michael
25 & Sons -- and this is their letter to us. Michael

1 & Sons refused to go into the house, and that's
2 probably because the placard on the door doesn't
3 say this house is unfit for human occupancy.

4 The placard says that this house is either
5 unsafe or unfit for human occupancy, which means
6 the house could be unsafe. I believe they thought
7 they could go into the house and fall through the
8 floor, which is what the notice could make them
9 believe. We were not able to have Michael & Sons
10 fix the house. They refused.

11 So after they refused, my husband and I
12 attempted to try to fix it ourselves without any
13 training whatsoever on how to fix the heating
14 system. We pulled the permit ourselves and went
15 through the process of, you know, having our
16 workers, who work on our properties normally, try
17 to fix the heating system.

18 We continued to ask the City what kind of
19 heating system would you like us to put in because
20 we put in one system, and they said, no, this is
21 not going to work, after we paid \$1,000 on that
22 heating system. At first they said we're going to
23 let you know what kind of system you need.
24 Eventually they said we're -- it's not our
25 responsibility to tell you what kind of system you

1 need.

2 We were in a situation where we could not have
3 a contractor like Michael & Sons fix it, we could
4 not fix it ourselves, and we were not able to have
5 it fixed with the placard still on the door. So
6 eventually, yes, we would like to have the heating
7 system fixed and we would like to rent it out, but
8 we just cannot do so with the placard on the door.

9 MR. LEAVITT: The placard is still there?

10 MS. GAINES: Yes, sir.

11 MR. GAINES: Yes.

12 MR. LEAVITT: And, therefore, a repairman
13 won't go in it?

14 THE WITNESS: That's right, sir.

15 MR. LEAVITT: That's ridiculous.

16 MR. MIDDLETON: So you stated that you had --
17 you contacted Michael & Sons to have them give you
18 an estimate. How many other contractors did you
19 contact that refused to go into the property?

20 MR. GAINES: I had three of them. I believe
21 it was RC, and I had another professional company
22 come out.

23 What it is is these companies aren't used to
24 putting in heat systems in properties that are
25 about to fall apart. So if it was just a heating

1 issue, they wouldn't have a placard on the door.
2 So they wouldn't have a problem putting a heating
3 system in and doing work -- HVAC work, but seeing
4 this, you know, green sticker -- it's unlawful to
5 enter the property and all, you know, that
6 language. These companies -- you know, I guess
7 they have certain types of insurance. I don't
8 know. They decided they don't want to do work --
9 heating work inside a property with those type --
10 with that type of language on the door.

11 So, basically, we have no tenants. No
12 tenants. The tenants are gone. Then the inspector
13 put a sticker on the door saying the property is
14 unsafe for public and for a tenant, assuming that I
15 would rent it out without the heating system in it.
16 So in my opinion, I believe she was or whoever --
17 they were trying to circumvent maybe me renting the
18 property and maybe trying to stop me from renting
19 the property but not understanding that I was going
20 to do some remodels and repairs, and just putting
21 the sticker and things on the doors held us up for
22 a year.

23 MS. GAINES: I think part of the problem, once
24 again, is that the code requires that if a house is
25 unsafe for human occupancy or unsafe that you post

1 a notice that says it's unsafe, and that has a
2 specific definition. But if it's unfit for human
3 occupancy, that's a whole other thing. That has a
4 definition, and that should have a separate notice
5 on the door. I think because the notice is in the
6 disjunctive -- it says it's either unsafe or unfit.
7 They have no clue what it is, and we really --

8 MR. GAINES: We don't know.

9 MS. GAINES: -- didn't have a clue what it was
10 either. We don't know if you're -- if they're
11 saying that the house is falling apart or if the
12 house is just unfit for human occupancy. And I
13 think that's what Michael & Sons' confusion was.

14 MR. GAINES: We also had, you know, some
15 dialogue with Cynthia Hall as to if we promise to
16 not rent it, she'll remove the placard, which is
17 insane. I didn't know if that was -- there was no
18 legal basis behind it. We don't have to make
19 promises and things of that -- if you could just
20 remove the placard without this promise or with a
21 word of a promise, that tells me that it wasn't
22 legally put there in the first place.

23 MS. GAINES: I think what my husband is
24 saying -- and I think that's indicative or at least
25 advanced by the fact that we came before you guys

1 once before, and when we were in front of you once
2 before, the City told you that our appeal was not
3 timely by statute. We have completely -- we've
4 complained several times that the City is not
5 complying with the statute that they're requiring
6 us to comply with and we've -- we've appealed. You
7 know, we've come time and time again, and the City
8 has not been compliant with the statute, and I
9 think that's what my husband is --

10 MR. GAINES: Yeah. I just want to recap. I
11 eventually want to rent it out. This is rental
12 income. I have a family. I make money off rental
13 income. Buying property since I was 18 years old.
14 That's what I do. And I try to keep everything
15 nice and safe for the tenants. That's not an
16 issue. That's not an issue.

17 This particular issue is strange to me. I
18 was -- moved the tenant out for nonpayment. We
19 have a vacant property. The City inspector places
20 a placard on the door vacant while I'm in the
21 process of remodeling and making adjustments and
22 upgrades. That sticker stopped me from making my
23 upgrades and everything.

24 MR. DEBBAS: Did you pull a permit for the
25 upgrades?

1 MR. GAINES: Yeah. I pulled the permit myself
2 to make some repairs, but I'm flying blind because
3 I'm working with people that somewhat know, but,
4 you know, they're not the top people that I need to
5 go in there and do things.

6 MS. GAINES: Yeah. But once again, we only
7 pulled the permits ourselves --

8 MR. GAINES: Because nobody else could.

9 MS. GAINES: We could not get these -- these
10 Class A contractors or, you know, the big
11 contractors to do it for us.

12 MR. LEAVITT: Can the building official take
13 that placard and change the word human occupancy to
14 residential occupancy so the permit can go in?

15 MS. GAINES: And I think -- one other thing we
16 want to touch on, sir. We -- we did --

17 MR. MIDDLETON: Did you answer his question?
18 How would we know that?

19 MS. GAINES: Well, I'm sorry. I don't --

20 MR. MIDDLETON: Yeah. So I think he --

21 MR. LEAVITT: He's right there.

22 MS. GAINES: But --

23 MR. FORTNER: So -- Mr. Leavitt, so you know,
24 this is an appeal to the property maintenance
25 official, not the building officials.

1 MR. LEAVITT: I see.

2 MR. FORTNER: This is -- Sherry Johnson is the
3 property maintenance official. So I'm going to
4 refer --

5 MR. LEAVITT: Well, who put the placard up?

6 MR. FORTNER: -- your question to her since
7 that's her area of expertise. We don't put
8 placards on buildings.

9 MR. LEAVITT: Who put the placard up? Who
10 worded it?

11 MS. HALL: Yeah. I'm going to -- I'm going to
12 provide some information as soon as they're done --

13 MR. MIDDLETON: Okay.

14 MR. LEAVITT: Okay.

15 MR. COMPO: All right.

16 MS. HALL: -- which I'm hopeful will fill in
17 some of the gaps.

18 MR. MIDDLETON: Okay.

19 MS. GAINES: And as far as the wording, I'm
20 relying on 105.6 of the wording of what the placard
21 should say.

22 Another thing we want to touch on is the fact
23 that this house has been placarded for over a year.
24 Once again, the USBC doesn't require any house to
25 have heat after May 1st. Here we are on May 14,

1 the second May 14th into which the house has been
2 placarded, and for some reason they still just
3 won't remove it.

4 MR. GAINES: I -- actually, once we didn't
5 have a tenant and we had a vacant property, I asked
6 repeatedly, okay, go ahead and remove the placard
7 because it's not applicable. There's no tenant
8 there. There's no one living there. There's not a
9 safety issue. It's not any kind of issue. No one
10 lives at the property.

11 And I wanted to plan to put upgrades in the
12 property and all the things that I needed to do so
13 I could do it easily so I could get my rental
14 income and get everything back on track. I still
15 have a mortgage on this property. So it seems
16 very, you know, unethical, very shady, and very
17 strange for the City to be reacting in this -- this
18 manner.

19 You know, I -- we tried to correspond with the
20 City to work it out, and it wasn't until we went to
21 Richmond and they reversed the timely issue -- but
22 then we hear from Ms. Hall, well, if you promise to
23 do this and this and if you promise to do this,
24 then we'll remove the placard. What is that? You
25 know, if you --

1 MS. HALL: Just --

2 MR. GAINES: -- could have removed it, you
3 could have removed it from day one.

4 MS. HALL: Just for the record, I have not
5 talked to them since the appeal.

6 MR. GAINES: We have it in emails, so --

7 MS. GAINES: I'm sorry?

8 MS. HALL: No.

9 MR. GAINES: We have it in email. So we have
10 a time-stamped email. We corresponded back --

11 MS. HALL: No.

12 MR. GAINES: That's another thing. My wife
13 is --

14 MS. GAINES: I'm sorry, but --

15 MR. GAINES: Let me just --

16 MS. GAINES: No. No. No.

17 MR. GAINES: Let me just make this statement.
18 She graduated with a juris doctorate. Okay? She's
19 very intelligent. This -- she's an attorney.
20 She'll be taking the bar soon.

21 We correspond through emails and things of
22 that nature so that people can't go back and say
23 that they didn't say something that they said.
24 Everything is documented.

25 MS. GAINES: Okay, Babe.

1 Okay. So as far as what Ms. Hall just told
2 you, that's not true. Me and Ms. Hall have
3 corresponded -- I'm sorry, Ms. Hall. I know you're
4 not under oath today, but --

5 MS. HALL: Don't -- don't patronize me,
6 Ms. Gaines. I have not spoken to you is what I
7 said.

8 MS. GAINES: By email.

9 MS. HALL: I have not spoken to you is what I
10 said.

11 MS. GAINES: I think that's a
12 misrepresentation before the board. I guess it's a
13 play on words. But we have had communications
14 twice since that appeal, which I don't think is
15 relevant, but I think it's unfair to misrepresent
16 the facts before the board.

17 Our last issue is that we made repairs to the
18 house. Not only were these -- there were two
19 repairs -- or two issues written up, but there were
20 two issues written up under 603.1 and 605.1. We
21 feel like we fixed those issues as of March 6th,
22 2017. We asked the code official. Come out,
23 reinspect the property, give us a new notice of
24 violation, and let us know exactly what we need to
25 fix because we feel like we've made repairs. He

1 refused. He outright -- he -- I want to say he
2 refused two or three times to the point where we
3 had to document that on the appeal.

4 We're in a situation now -- we can't have the
5 placard removed. We can't have it reinspected as
6 the code requires. We cannot have a new notice of
7 violation. We are stuck. We cannot have it fixed
8 by Michael & Sons. We cannot pull a permit and fix
9 it ourselves. And I think that's all we have to
10 say about it.

11 MS. PHANEUF: Thank you.

12 MR. MIDDLETON: Thank you.

13 MS. GAINES: Thank you.

14 MS. HALL: I have a packet of documents, which
15 I think will be helpful. And for the court
16 reporter, there -- it's one packet. There's five
17 separate documents, so we would ask that those
18 documents be listed as City's Exhibits Number 1
19 through 5 in the order I'm going to go over them
20 now.

21
22 (City's Exhibit Numbers 1, 2, 3, 4, and 5 were
23 marked for identification.)

24
25 MS. HALL: And I just paper clipped them

1 together, but they're separate documents. So the
2 first document you should have is a residential
3 lease for the property at question today, and that
4 is 2410 West Avenue in the City of Norfolk. And
5 that's a residential lease with a tenant. So this
6 is rental property. It is not owner-occupied
7 property.

8 And this initial matter began with a complaint
9 from the tenant as to the condition of the property
10 and the lack of heat, so that caused an inspection
11 to be conducted. And in this residential lease,
12 you'll see the terms of the lease. But just so you
13 know, there was a tenant in that location at the
14 time we did the initial inspection and all the way
15 through until the time of placard.

16 MS. GAINES: And I'm sorry. She said
17 something during my time as well, but I just want
18 to point your attention to the fact that this lease
19 ended November 10th, 2016. The law allows us to
20 hold this tenant as a holdover. Basically,
21 tantamount to a trespasser at that time. We issued
22 her on December 1st a 30-day notice to vacate.
23 That means by January 1st she became a trespasser,
24 and she was not paying us any rent. However, she
25 was completely out of the premises by the time the

1 house was placarded.

2 MS. HALL: I would just advise the board that
3 there was a tenant in that location at the time the
4 initial inspection was done. The inspector is here
5 and can answer that question for you. What she did
6 with her tenant with respect to holdovers and all
7 that, I don't have any idea. I do know that there
8 was a tenant. There was no order of eviction for
9 that tenant at the time of this initial issue
10 coming to light. So we have a tenant. It's
11 residential property, and it's not owner-occupied
12 property.

13 So the inspector did an inspection and, on or
14 about February 7th of 2007, issued a notice of
15 violation to Mr. Joshua Gaines, who's present
16 today. He is listed as the sole owner of the
17 property. Ms. Gaines is not listed in the real
18 estate database as being an owner of the property.
19 I don't know if that's changed subsequent to all of
20 this occurring, but at the time she was --

21 MR. GAINES: That's irrelevant.

22 MS. HALL: -- she was not the owner.

23 MS. GAINES: I'm sorry. I'll speak to it. My
24 husband and I have been married for ten years. My
25 husband has some medical issues, including he was

1 born with a kidney issue which required him to have
2 one of his kidneys removed. So yes, I do have a
3 deed listed with my name on it. My husband has
4 given me an interest in the property, which I can't
5 record, but the law does not require a deed to be
6 recorded in order to be law or to be actual. I do
7 have a real interest in the property.

8 MR. GAINES: I would also like to add that
9 that's actually the inspector right there sitting
10 in the back. He actually asked the tenant does she
11 have a place to go. So he made sure she was out of
12 the property before he placed the placard. So
13 that's very important. Basically, it was vacant
14 when the placard was placed on the door, which
15 is --

16 MS. HALL: If I could get back to my piece.
17 The notice of the violation has attached the code
18 sections that are at issue or what was observed to
19 be in violation, and on the second page of that
20 first -- that second document, which would be
21 City's Exhibit Number 2, it lists Section 603.1,
22 and there was a date of correction of
23 February 13th.

24 And that was all mechanical appliances,
25 fireplaces, solid burning cooking appliances.

1 Heating appliances shall be maintained and
2 installed in a safe working manner and shall be
3 capable of performing the intended function. So an
4 additional requirement -- the correction was to
5 repair or replace the HVAC system, and they were
6 also notified at that time that failure to have a
7 working heating system could result in the City to
8 be placarded. So they were notified at that time
9 that for residential tenant-occupied property, an
10 operable heating system needed to be there and
11 working in order to be proper.

12 There was a whole host of other violations
13 cited. We had a meeting with Mr. and Ms. Gaines in
14 my office at some point during this period of time
15 this matter was pending on appeal, and Mr. Gaines
16 informed me that he had no intention of fixing any
17 of these violations at that house. I'm not sure if
18 that's still the case, but he did indicate that to
19 me and also to the property maintenance code
20 official.

21 So we have a nonoperable heating system in a
22 tenant occupied dwelling, and we have multiple
23 other violations that have not been repaired. To
24 date none of these violations have been repaired.

25 So then on document --

1 MS. GAINES: I just want to say to date some
2 of these violations have been repaired. Most of
3 them the City has refused --

4 MR. GAINES: To reinspect.

5 MS. GAINES: -- to reinspect.

6 MS. HALL: On that issue I'm going to let the
7 building property maintenance official and the
8 building official talk about the reinspections
9 because there was some issue about that previously.

10 The document Number 3 in your packet is an
11 email from Joseph Johnson, the inspector, to the
12 Gaineses indicating or transmitting a copy of the
13 notice of violation, that February 7th notice of
14 violation. Makiba Gaines -- Ms. Gaines responded
15 and attached a copy of the Michael & Sons
16 contractor report, which Ms. Gaines had previously
17 provided to you.

18 In that document Ms. Gaines indicates that the
19 electrician fixed the breaker and the heat is
20 operable, and she attached to that email a report
21 of Michael & Sons where that report indicated the
22 package unit is mangled. It's -- the rain shield
23 is crushed, the unit's integrity is in shambles,
24 and the unit is in need of serious upgrade. The
25 property maintenance inspector has also taken

1 pictures as of that time period, and the unit was
2 mangled and not in operable condition.

3 MS. GAINES: And I can speak to that as well.
4 He did attempt to try to make some repairs on the
5 outside. The unit is located on the outside. The
6 breakers were located on the outside; however, he
7 refused to go in the inside of the property, which
8 is what we needed him to do.

9 MS. HALL: I would also advise this board that
10 there was a court hearing, and Mr. Gaines indicated
11 to the Court that that heating system was not
12 fixed. That was subsequent to that email being
13 sent.

14 You also have in your packet, which is
15 Document Number 4 --

16 You can sit down, Ms. Gaines.

17 MR. DEBBAS: Ms. Gaines, wait for your turn,
18 please.

19 MS. GAINES: Okay. I'm sorry.

20 MR. DEBBAS: Thank you.

21 MS. GAINES: Last time we did it in the same
22 way.

23 MS. HALL: The Document Number 4 in your
24 packet is a notice of violation dated February 15th
25 of 2017, which indicates that the violations

1 previously cited in the earlier notice of violation
2 hadn't been corrected, and the structure was going
3 to be placarded. At the time of placarding, there
4 were tenants in the unit. Those tenants had to be
5 placed elsewhere or had to move elsewhere.

6 But I would just like to advise the board at
7 this time that a -- by statute a structure -- or
8 excuse me -- a -- the definition of unsafe
9 structure is listed in the code, and I will read
10 the definition to you. And it says under
11 Section 202 of the property maintenance code, the
12 Virginia Maintenance Code, that a structure is
13 unfit for human occupancy if any existing structure
14 determined by the code official to be dangerous to
15 the health, safety, and welfare of the occupant or
16 to the public because of the degree to which the
17 structure is in disrepair or lacks maintenance,
18 ventilation, illumination, sanitary or heating
19 facilities or other essential equipment.

20 So the fact that there was no heating system
21 by statutory definition makes that an -- a
22 structure unfit for human habitation. So the
23 simple solution would be -- have been to repair the
24 heating system, which is all the City ever asked
25 them to do with respect to that particular issue.

1 Now, there's a whole bunch of other violations that
2 also have to be corrected, things related to the
3 maintenance of the structure. But that particular
4 issue by statutory definition makes the structure
5 unfit for human occupancy.

6 Now, Ms. Gaines said, well, we can't have
7 anybody go in there. The contractor is afraid to
8 go in there because it's placarded. Both the code
9 official and myself indicated to her in court and
10 in meetings that the code permits by statutory
11 language anybody to go on that property for the
12 purposes of correcting the violations, that the
13 placard order is for people actually residing in
14 the unit, not for contractors going on the property
15 to repair the unit.

16 So arguing that her contractors couldn't go in
17 there is ridiculous, and she was told that numerous
18 times, as was Mr. Gaines. So that is a red herring
19 for this board. I believe she keeps bringing that
20 up so that she can be a victim in this situation,
21 which is absolutely ludicrous because all that
22 needs to be done here is for the corrections to the
23 code violations to be undertaken. The problem is
24 solved.

25 Now, the problem the City has is we cannot

1 remove the placard by statute until those
2 violations which made us placard it in the -- to
3 begin with are corrected. We would be neglecting
4 our duty that way also.

5 And I would also point out for everybody
6 who -- or for the Gaineses, who claim they're
7 victims, we have to deal with the tenants that are
8 claiming what the heck is the City doing allowing
9 landlords who are profiting from keeping property
10 in this condition, allowing us to live in these
11 conditions without any recourse.

12 So that's the consideration here, that we
13 serve the interest of both sides, we serve the
14 interest of property owners, and we serve the
15 interest of tenants that are living in those units.
16 So I understand the Gaineses' argument, and I
17 understand it's -- it's tough to be a landlord, and
18 it's costly to be a landlord, but with that -- with
19 those duties comes responsibilities, and those
20 responsibilities include maintaining the property
21 in a safe manner free of code violations, and we
22 don't have that here.

23 I would note that the initial February 7th,
24 2017 notice of violation was not appealed. Those
25 things are admitted by the Gaineses. All of those

1 violations cited by the City are things admitted by
2 the Gaineses, and they have admitted that both to
3 the State Technical Review Board and to the Court.
4 So I'm not sure why we're still dealing with this
5 issue. All that needs to occur is that the
6 violations need to be corrected and the City will
7 lift the placard.

8 So you have those documents. Those are
9 documents Number 1 through 4. There's one
10 additional document which I would like to point
11 out, and that is that the -- we received and I
12 received a copy of this, an email from
13 Makiba Gaines, which is Ms. Gaines, saying that she
14 had removed the heating system and she was no
15 longer going to provide heat to her tenants. Well,
16 that is a violation of the code, to not provide
17 heat to tenants. It's a violation of multiple code
18 provisions, including probably even the Landlord
19 Tenant Act.

20 So I would just note that when we did discuss
21 this with the Gaineses, we did attempt to resolve
22 the issues to avoid the inconvenience to both the
23 State board and this board. We indicated that,
24 look, the placard is on the property. All you have
25 to do is fix the heating system. You've got to get

1 those other issues fixed too while you're at it,
2 but we need to move this forward and get correction
3 of the issue. And we haven't been able to achieve
4 that for whatever reason, but we're still willing
5 to achieve that. If we could just get this
6 violation corrected, the placard could be lifted.

7 Now, I believe that Ms. Gaines indicated or
8 cast some aspersions on the property maintenance
9 and/or the new constructions folks with respect to
10 inspections, that we didn't come out for
11 inspections and we wouldn't do whatever. But I
12 believe there were multiple inspections called.
13 They did go out there to do the inspections. The
14 inspections failed.

15 And Ms. Gaines and Mr. Gaines continued to
16 send emails asking us to specify what heating
17 system they should put in. And we told them we
18 couldn't specify the heating system, that they had
19 to choose that, but if they chose a heating system,
20 we could at least advise them if it was an
21 acceptable heating system, that we weren't in the
22 business of recommending one heating system over
23 another, but we could definitely let them know if
24 whatever they chose would be acceptable.

25 And I can ask Rick if he would like to address

1 that particular issue.

2 MR. FORTNER: Sure. So Mr. Gaines obtained in
3 a permit -- a mechanical permit on March 13th,
4 2017 -- and I'll pass this around. I apologize. I
5 only have the one copy. So obtained the permit on
6 March 13th of 2017. An inspection -- that permit
7 was for a gas space heater and also a gas line. An
8 inspection was requested on March 20th of 2017 on
9 the gas line pressure test, at which time the
10 inspector noted that an unvented room heater was
11 used, and the Gas Code G2445.2 states that you
12 cannot use an unvented room heater as the sole
13 source of heat. It would have to be either a
14 vented room heater or some type of central furnace
15 that was vented. And there was nothing done to the
16 gas line at that time.

17 We were called back on July 24th of 2017. And
18 these inspections were all requested through our
19 new system. We went to a new system in 2016, that
20 you do it online. It's not a call in. You have to
21 have a PIN number and the permit number so only the
22 applicant that owns that permit can request that
23 inspection. So -- unless they give that
24 information to somebody else, but it's the
25 applicants --

1 MS. GAINES: And I'm sorry, but we have to
2 leave in about 13 minutes to get our children. So
3 if -- I don't know. I have a few more things just
4 to say to rebut what she had to say, and then, you
5 know, we'll be happy to hear your decision because
6 we have to make sure to get our children on time.

7 MS. HALL: And I just want to say one other
8 thing. I think you're going to hear that we don't
9 have to have heat between March and -- or October
10 or whatever the date is. That's not the section
11 they were cited under. They were cited under not
12 having an operable heating system available. If
13 the tenant never turns on it on, that's not our
14 consideration. There has to be a unit available
15 for them to have to turn on.

16 So her saying she's got to provide heat
17 between certain time periods is not the code
18 section she was charged under. Now she is mad that
19 we didn't charge her under that code section in the
20 initial notice of violation, but that is not the
21 code section she was charged under. The code
22 section she was charged under is 603.1 and 605 --
23 whatever code section that is.

24 MS. GAINES: And I'm sorry. She did mention
25 that she had one more thing to say. So if

1 possible, I'd like to --

2 MR. DEBBAS: Just let Mr. Fortner finish,
3 please.

4 MR. FORTNER: Yeah. I've got one real quick
5 thing, and I'll pass this around.

6 So on July 24th of 2017 we were called again
7 for a gas line pressure test inspection. When the
8 inspector found -- he found no one was at the
9 property, and he was unable to gain access. But he
10 did check the gas line and found no pressure on it.
11 So he can only assume that it -- they didn't get it
12 pumped up or that it had a leak, and that was the
13 last time we were called. So I'll pass that
14 around.

15 MR. DEBBAS: Great. Just one quick question
16 for you. The posted sign on the building -- was
17 the building unsafe or unfit? Was it structurally
18 safe?

19 MR. FORTNER: My understanding is that it was
20 structurally safe.

21 MS. HALL: It was structurally safe, and the
22 notice says --

23 MR. FORTNER: I mean, my inspector had no
24 issues with going in. So --

25 MS. HALL: Do we have a copy of it?

1 MS. JOHNSON: I have the one that -- I can
2 read it to you. It specifies unsafe or unfit. We
3 use the green placards to -- for the fire
4 department to notice that it's unfit, not unsafe.
5 If this was to be orange, it would be unsafe. So
6 the fire department wouldn't go in and fight a fire
7 inside. Orange identifies it as structurally
8 unsound. Green identifies it as just unfit.

9 MR. DEBBAS: So it was a green one?

10 MS. JOHNSON: Correct.

11 MS. HALL: And it says that on there.

12 MR. DEBBAS: So the company that does the heat
13 should go in with a green one no problem?

14 MS. HALL: That is correct. And, in fact, we
15 told them by email their contractor was fully able
16 to go in there.

17 MR. DEBBAS: Yeah.

18 MS. HALL: And we told her that in a meeting
19 too, that there was no --

20 MR. DEBBAS: You can always tell your
21 contractor to call the City to confirm that the
22 green placard will let you go in.

23 MS. GAINES: And, yes, sir, we did.

24 MR. DEBBAS: Well, that doesn't make sense.

25 MS. GAINES: That's the first thing. We -- we

1 advised -- we -- we had no reason to call Michael &
2 Sons if we didn't want them to repair the property.
3 We advised Michael & Sons the City of Norfolk says
4 you are able to go into the property, and he
5 refused. So -- so that's the -- that's the
6 first --

7 MR. DEBBAS: You need to find another
8 contractor, then.

9 MS. PHANEUF: Yep.

10 MS. GAINES: We tried RC's. We tried to do it
11 ourselves.

12 MR. DEBBAS: No.

13 MS. GAINES: It's okay. We didn't expect to
14 win today.

15 So the second issue -- Ms. Hall is
16 misrepresenting issues to you guys today. She said
17 to you that she has not spoken to us or that she
18 has a statutory duty to maintain the placard. I
19 have an email from Ms. Hall stating that she wanted
20 to -- the same day we won at the Richmond State
21 Board, she said, I'll remove the placard if you
22 promise to do this and you promise to do that. I
23 said, Ms. Hall, we can't make those promises right
24 now because we've had the placard for a year. We
25 need to resolve this through the regular process,

1 the channels we're going through. So what she said
2 to you is just not true today, and it's unfair for
3 her to represent the facts in that fashion.

4 As far as the reinspection, the reinspection
5 was not done on the Building Codes 603.1, 605.1.
6 It was not done as a USBC. It was done under
7 the -- under a different section or for
8 Mr. Fortner's department. It's hard for us to
9 explain, but it's two separate departments. When
10 we pulled the permit ourselves because we had no
11 other way of getting the heat fixed, that's when
12 Mr. Fortner's department came in and said, okay,
13 we'll do these specific inspections. Mr. Johnson
14 did never complete a reinspection. So I think
15 that's improper as well.

16 Also, she brought up the fact that it was
17 placarded under 603.1 and 605.1. If we look at the
18 language of those specific provisions, which she
19 continues to go back to, those provisions require
20 if you have a heating system, if you have an
21 electrical system, that those systems be operable.
22 It does not require that you have a system at all.
23 So I think that --

24 MR. MIDDLETON: You're saying you would have a
25 property that wouldn't have heating or electrical

1 in it?

2 MS. GAINES: I think -- that's not the case.

3 MR. MIDDLETON: That's what you just stated.

4 MS. GAINES: No, sir.

5 MR. MIDDLETON: Well, then you stated yourself
6 wrong, but that's the way I interpret it.

7 MS. GAINES: What I stated was that if you
8 have a system, under 603.1 and under 605.1, those
9 systems have to be operable. There are other
10 codes --

11 MR. COMPO: So did you have a system when you
12 were cited?

13 MS. GAINES: When we were cited? Yes, we did.

14 MR. COMPO: Okay. Thank you.

15 MS. GAINES: However, when we removed the
16 system, we asked for a reinspection.

17 MR. COMPO: When you were cited, what you were
18 cited for was a system that didn't work; is that
19 correct? Yes or no?

20 MS. GAINES: Yes, sir.

21 MR. COMPO: Okay. Thank you.

22 MS. GAINES: However, we removed the system,
23 and when we --

24 MR. GAINES: How is not removing the system
25 changing the circumstances?

1 MR. COMPO: Well --

2 MS. GAINES: Okay.

3 MR. COMPO: -- we'll get the explanation of
4 that.

5 MS. GAINES: It's fine.

6 MR. GAINES: Right. You understand?

7 MS. GAINES: Okay. We didn't expect to win
8 here.

9 MR. DEBBAS: But it's not about winning or
10 losing.

11 MR. GAINES: It's about common sense.

12 MS. GAINES: Right.

13 MR. COMPO: We've got to figure out how we can
14 all move forward from this.

15 MR. GAINES: Okay.

16 MR. DEBBAS: Exactly.

17 MS. GAINES: We have no way of getting it
18 fixed.

19 MR. GAINES: There's no tenants. I don't have
20 no plan of putting no tenants in, but there's a
21 sticker on the door that says --

22 MR. COMPO: Wait. Wait.

23 MR. GAINES: -- you can't have tenants, and
24 you can't make these repairs. You can't do this
25 because it's occupied, but it's not occupied.

1 MR. COMPO: We'll figure out how to get past
2 that. Did you not say earlier to this board that
3 that's a rental property?

4 MR. GAINES: Eventually --

5 MR. COMPO: You needed --

6 MR. GAINES: Eventually we'll rent it --

7 MR. COMPO: Okay.

8 MR. GAINES: -- once I remodel it.

9 MR. COMPO: But you just said two different
10 things.

11 MS. GAINES: But the problem is we can't get
12 it fixed --

13 MR. GAINES: There's no tenants in it now.

14 MS. GAINES: -- with a placard on the door.

15 MR. COMPO: Currently there are no tenants.

16 MR. GAINES: Correct.

17 MR. COMPO: But we need to figure out how you
18 can make it so you can occupy the building.

19 MR. GAINES: Well, the thing is the way to
20 make it to occupy the building, you have to remove
21 the sticker that doesn't have to be there.

22 MR. DEBBAS: No. You don't have to remove the
23 sticker.

24 MS. PHANEUF: No, you don't.

25 MS. GAINES: Okay.

1 MS. PHANEUF: No. You just need a contractor
2 that will come in and --

3 MR. DEBBAS: You just need a contractor that
4 can pull --

5 MR. GAINES: Okay.

6 MS. GAINES: And we can't find one.

7 MR. DEBBAS: Oh, come on. Call Air Specialty
8 right now --

9 MS. PHANEUF: There's a ton of them.

10 MR. DEBBAS: -- and they will come and do it
11 for you.

12 MS. GAINES: Therefore, we attempted to do it
13 ourselves, and we couldn't do it.

14 MR. DEBBAS: You can't do it yourself.

15 MS. GAINES: Okay.

16 MR. DEBBAS: You're not qualified.

17 MS. GAINES: So do you guys get -- you don't
18 believe that they should have reinspected our
19 property on March 20th either?

20 MR. COMPO: Well, we will -- we'll talk to
21 these folks about it and then figure out.

22 MS. GAINES: Oh.

23 MR. COMPO: We've listened to everything
24 you're saying.

25 MS. GAINES: Oh, okay.

1 MR. COMPO: And we'll see if we can't help --

2 MS. GAINES: Okay.

3 MR. COMPO: -- figure out -- this is -- it has
4 got to be resolved.

5 MS. PHANEUF: Yeah.

6 MS. GAINES: Okay.

7 MS. PHANEUF: Because we discussed in the
8 previous hearing --

9 MS. GAINES: Okay.

10 MS. PHANEUF: -- you know --

11 MS. GAINES: Well --

12 MS. PHANEUF: -- the simplest path to getting
13 to the place you want to be is to replace and
14 repair the system, and then the City will remove
15 the placard.

16 MR. GAINES: Well, let me ask you this simple
17 question.

18 MS. GAINES: No. You know, no. I'm sorry.
19 We have to go get our children.

20 MR. GAINES: Just one more question. You
21 know, because I also buy properties. And if I buy
22 a property and it doesn't have a heating system or
23 it doesn't have some inoperable things, can the
24 City just come and put a sticker on and slow down
25 the process of remodeling? I don't think so.

1 That's not a part of the law. That's not a -- the
2 law is there to protect the tenants, and I
3 understand that. But if there's no tenants, what
4 are you protecting?

5 MR. DEBBAS: But there was a tenant when they
6 placarded it, so --

7 MS. GAINES: No, sir. No, sir.

8 MR. GAINES: There was not a tenant. That's
9 what we're trying to explain to you.

10 MS. GAINES: Sir, Ms. Hall has misrepresented
11 three facts before you today, and I've proved to
12 you that she was --

13 MR. DEBBAS: Was there someone in the unit
14 when they placarded?

15 MR. GAINES: No, sir.

16 MS. GAINES: No.

17 MR. DEBBAS: You said that he told them to get
18 out.

19 MR. GAINES: Once they're gone --

20 MS. GAINES: He --

21 MR. GAINES: -- there wasn't no tenant.

22 MS. GAINES: No. I'm sorry. He put them out
23 on February 7th. He placard the property on
24 February the 15th. There was no --

25 MR. GAINES: No tenant.

1 MS. GAINES: -- no person there. There was no
2 rental agreement whatsoever.

3 MR. GAINES: That is the simplest thing we're
4 trying to explain.

5 MS. GAINES: Ms. Hall told you that fact
6 today, but it was --

7 MR. LEAVITT: Was it vacated?

8 MS. GAINES: -- a lie.

9 MR. LEAVITT: Was it vacated?

10 MS. GAINES: It was completely vacant.

11 MR. GAINES: Completely vacant. So these
12 statutes that they're using don't apply.

13 MS. GAINES: I think the problem is this is an
14 enforcement agency. This is an executive agency.
15 They don't make the law. They enforce it. So what
16 we're asking is just to be held to the law, what
17 the law is. The law says that it has to be
18 occupied or a danger to the public. It was not
19 occupied. It was not under a tenancy.

20 So we ask you to go ahead and make your
21 decision today so that if we have to --

22 MR. GAINES: It seems as though it's very
23 unfair, and it's very strange behavior for a city
24 to see clearly the property is not occupied.

25 Tenant is long gone. I cannot do the repairs that

1 I need to do, and I can't do the things that I need
2 to do. There's a sticker on the door. Can you
3 remove the sticker?

4 MR. DEBBAS: Well, one more time. The sticker
5 on the door does not forbid you to do the work.

6 MR. GAINES: Whatever the case may be, there
7 was no tenant there.

8 MR. DEBBAS: Okay.

9 MS. GAINES: Why has she been misrepresenting
10 these facts to you? Three facts. She has lied to
11 you today.

12 MR. GAINES: There was no --

13 MS. GAINES: And she can come to you --

14 MR. GAINES: A vacant property --

15 MS. GAINES: -- right now and --

16 MR. GAINES: -- completely.

17 MS. GAINES: -- she explain why she lied to
18 you.

19 MS. HALL: I would object on the record to
20 being called a liar.

21 MS. GAINES: Oh, I didn't call her a liar. I
22 said she lied to you today, and I have proof that
23 she lied to you today. And I --

24 MR. DEBBAS: You said that you spoke to her.
25 She never spoke with you. She sent an email.

1 You sent an email to her, but -- so that's not
2 lying.

3 MS. GAINES: It was a play on words, though.

4 MR. DEBBAS: It's not lying.

5 MS. GAINES: That's not a lie, right.

6 MR. DEBBAS: She did not speak to you. Did
7 she speak to you?

8 MS. GAINES: No. That's not a lie.

9 MR. DEBBAS: Okay. Then end of subject.

10 MS. GAINES: What is a lie --

11 MR. GAINES: If I send you an email --

12 MS. GAINES: -- is that she said --

13 MR. GAINES: -- and you correspond by email --

14 MR. DEBBAS: You didn't say correspond by
15 email.

16 MS. GAINES: Okay.

17 MR. DEBBAS: You said spoke to her.

18 MS. GAINES: It's a -- it's a play on words.

19 MR. DEBBAS: Okay. No.

20 MS. GAINES: But what was a lie was saying
21 that house was occupied on February 15th, 2017, and
22 she knew it was not.

23 MR. DEBBAS: Nobody said it was occupied
24 February 15th.

25 MS. GAINES: She said it was --

1 MR. DEBBAS: No.

2 MR. GAINES: She said it.

3 MS. GAINES: Can we ask the court reporter --
4 I don't know if you're able to review it at this
5 moment. She told the board today that it was
6 occupied on February 15th when it was placarded.

7 MR. MIDDLETON: Let me -- let me interject
8 something that -- I'm a member of another board.
9 I'm on the board of contractors, and I can assure
10 you there are tons of contractors --

11 MR. DEBBAS: Exactly.

12 MR. MIDDLETON: -- that will go out there and
13 put you a heating system in. For you to stand
14 before us today and say contractors are not allowed
15 to go in there is wrong, and you've been dealing
16 with the wrong people. You can go to the phone
17 book and I guarantee you could have five people --

18 MS. GAINES: We tried.

19 MR. MIDDLETON: Ma'am, I'm not buying that
20 argument.

21 MS. GAINES: Okay.

22 MR. MIDDLETON: I mean, I'm on the board of
23 contractors and I deal -- I've been a contractor
24 for 98 years. I know.

25 MS. GAINES: I can give it to you in writing

1 today. We're ready to hear --

2 MR. COMPO: Actually, it doesn't say that.

3 MR. GAINES: Well, you might need to check it
4 out.

5 MS. GAINES: Well, we can call Michael & Sons
6 today.

7 MR. DEBBAS: Oh, forget about Michael & Sons.

8 MS. GAINES: Okay.

9 MR. DEBBAS: I mean --

10 MR. COMPO: Yeah. They're just one person.
11 You need to call somebody else.

12 MR. DEBBAS: They're maintenance contractors.
13 Michael & Sons are maintenance contractors.

14 MS. GAINES: Okay. Can we ask for your
15 decision today because we have to --

16 MR. GAINES: Either way -- either way, under
17 the statute --

18 MS. GAINES: It was unoccupied.

19 MR. GAINES: -- it was unoccupied. You know,
20 the placard was set on the door.

21 MS. GAINES: And we have to apply the law
22 here. It was unoccupied.

23 MR. GAINES: I mean, that's a clear situation
24 right there. I mean --

25 MS. GAINES: I understand you guys work. You

1 may have been appointed by the City; however, this
2 should be an impartial board. You can't speak to
3 them later. The code says you should not be
4 speaking to them outside of this hearing about --

5 MR. COMPO: You're the one that wants to
6 leave.

7 MR. DEBBAS: Exactly.

8 MR. COMPO: You're welcome to stay while we
9 ask them their questions.

10 MS. GAINES: Well, we're staying until 2:15.

11 MR. COMPO: Okay.

12 MR. DEBBAS: One of you needs to go, then, but
13 one of you needs to stay. Do you want to --

14 MS. GAINES: Do you want to go get the kids?

15 MR. GAINES: No. Let me just ask this. Once
16 a property is vacant, there's no tenant. What's
17 the reason for all of this?

18 MR. MIDDLETON: How's the City to know that
19 it's not going to be brought up to the codes?

20 MS. GAINES: Well, the problem is the City --

21 MR. GAINES: That's a good question.

22 MS. GAINES: -- has a law that it has to
23 comply with. The City can't go say Ms. Hall is
24 making up the law as she goes along. The City has
25 a code that it must comply with, and if we are

1 violating those codes --

2 MR. GAINES: Hold me to the law.

3 MS. GAINES: -- hold us to it, but she can't
4 make it up as she goes along.

5 MR. GAINES: If there's no tenant in the
6 property, no one lives there -- good question. How
7 do we know you're not going to put a tenant there?
8 You don't know.

9 MS. GAINES: But the problem is --

10 MR. GAINES: Guess what?

11 MS. GAINES: -- it's unconstitutional to hold
12 us to a future violation of law.

13 MR. GAINES: Exactly.

14 MS. GAINES: You --

15 MR. GAINES: Now, if you -- if you want to let
16 me rent it out and say, hey, you didn't fix what
17 you were supposed to fix, violation, court,
18 violation, fines, whatever you want to do, and I am
19 held to the law.

20 MR. MIDDLETON: But didn't the tenant call and
21 complain of the conditions --

22 MR. GAINES: The tenant --

23 MR. MIDDLETON: -- to begin with?

24 MR. GAINES: -- was gone.

25 MR. DEBBAS: Yeah, but back then --

1 MR. MIDDLETON: Didn't the tenant call and --

2 MR. GAINES: When the tenant --

3 MR. MIDDLETON: Excuse me.

4 MS. GAINES: I'm sorry. That's my --

5 MR. MIDDLETON: Didn't the tenant call and
6 complain of the conditions to the City?

7 MR. GAINES: Tenants call all the time.

8 MS. GAINES: She did, but at the time she was
9 not a paying tenant either. She was a pauper.

10 MR. GAINES: She was actually --

11 MS. GAINES: She was a trespasser. She was
12 tantamount to a squatter.

13 MR. GAINES: Exactly.

14 MS. GAINES: So --

15 MR. MIDDLETON: So that alludes her -- that
16 exempts her from being able to call and say this
17 house is --

18 MR. GAINES: No.

19 MS. GAINES: She called, but what I'm saying
20 is the circumstances had changed by the time the
21 house was placarded. She was not there.

22 MR. MIDDLETON: So while -- I understand that,
23 but what -- where -- was the condition of the
24 tenant as -- did that change between when she moved
25 out and when the City put a placard on?

1 MR. GAINES: Yeah. Well, I called --

2 MS. GAINES: No. What changed was that there
3 was no occupancy, and the code requires an
4 occupancy. I understand you may know the --

5 MR. MIDDLETON: Well, the violations occurred
6 while they were living in there. Whether they were
7 paying or not --

8 MS. GAINES: Okay.

9 MR. MIDDLETON: -- there was the occupancy --

10 MR. GAINES: Let me paint a picture for you.
11 The tenant says something about heat. I don't know
12 if you think I just say okay and hung up the phone.
13 No. I called repair people. They came to try to
14 fix the particular unit. It was an old unit. A
15 few different repair people came to repair it, and
16 I spent money. And, eventually, someone else said
17 this was not worth repairing. So we had to -- you
18 know, it had to go. Between that time where the
19 people are coming to check it and try to make
20 repairs on that, this tenant is gone now. Do you
21 understand? So to try to make it seem like, oh,
22 the tenant was calling to try to get the heat and
23 nothing was being done, that's not the case.

24 MS. GAINES: Okay. We have to wrap it up, but
25 I just want to say that this is a dangerous idea.

1 You guys have properties. I'm sure you do. You
2 don't want the City to be able to go to your
3 property and make up something as they go along.
4 If it's in the code, then it's in the code. If
5 it's not in the code, you should not be held to it.
6 And if it goes for us, it can -- it could also
7 happen to you.

8 So we just want to be held to the code. The
9 code says if it's unfit, it has to be a danger to
10 the occupants or a danger to the public. There
11 were no occupants.

12 MR. GAINES: No occupants.

13 MS. GAINES: So it had to be a danger to the
14 public. If you find that it was no danger to the
15 public, then you have to rule in our favor. If
16 not, we're ready to go back to the State Board.

17 MR. GAINES: I mean, how could it be a danger
18 to an occupant if there's no occupant?

19 MS. GAINES: Okay. Well, I'm sorry. We have
20 to wrap it up.

21 MR. GAINES: That's pretty, you know -- and
22 we -- I don't think we have to stay around for
23 that. We'll just go get the kids and things, but I
24 thank you for your time. And you guys -- you know,
25 if there's no occupant -- I'll just reiterate. If

1 there's no occupant in the property, no tenant at
2 the time of the placard --

3 MS. GAINES: And before we leave today, can we
4 have Ms. Hall on the record say that it was
5 occupied or not? Was it occupied?

6 MS. HALL: I don't answer to Ms. --

7 MR. GAINES: Okay. All right.

8 MS. GAINES: Mr. Johnson, was it occupied when
9 you placarded the property?

10 MS. HALL: Ms. Gaines doesn't --

11 MS. GAINES: She doesn't want to answer that
12 question. If you play it back with the court
13 reporter, she said that it was un -- that it was
14 occupied, which was a lie. She knows it was not
15 occupied.

16 MR. GAINES: Not occupied property. I'm just
17 recapping before I walk out. Not occupied. No one
18 lives there.

19 MS. GAINES: Okay. Come on.

20 MR. MIDDLETON: Thank you.

21 MR. GAINES: So, you know, they can't placard
22 something in anticipation of me doing something.
23 If I violate --

24 MS. GAINES: Okay. Have a great day.

25 MR. GAINES: -- give me my fines, but if I

1 didn't --

2 MS. GAINES: Come on.

3 MR. GAINES: -- let it go.

4

5 (Mr. and Ms. Gaines exited the room.)

6

7 MR. MIDDLETON: Mr. Chairman --

8 MR. LEAVITT: Yes, sir.

9 MR. MIDDLETON: -- being that the occupancy
10 seems to be a big topic, could you -- could I ask
11 Ms. Hall to reread the statute which you read
12 earlier that -- what it -- constitutes putting a
13 placard on it? It was 80-something, I think.

14 MS. HALL: Yes. It's Section 202 is the --

15 MR. MIDDLETON: Oh, I'm sorry about that.

16 MS. HALL: -- a structure unfit for occupancy.
17 An existing structure determined by the code
18 official to be dangerous to health, safety, and
19 welfare of the occupants of the structure or the
20 public because of the degree to which the structure
21 is in disrepair, lacks maintenance, ventilation,
22 illumination, sanitary or heating facilities, or
23 other essential equipment, or the required plumbing
24 and sanitary facilities are inoperable.

25 The inspector inspected. The property was

1 occupied at the time the placard was put up.

2 MR. COMPO: And that was -- it was on
3 February 7th when the -- the notice of violations?

4 MS. HALL: That's correct.

5 MR. COMPO: It was occupied?

6 MR. LEAVITT: Yes.

7 MS. HALL: That is correct.

8 MR. MIDDLETON: But it also says the tenant or
9 the public.

10 MS. HALL: That's correct.

11 MR. MIDDLETON: Even if the tenant wasn't
12 there, it's still not available for the public to
13 come in.

14 MR. LEAVITT: Yeah.

15 MS. HALL: That's correct.

16 MR. MIDDLETON: You take the placard off, the
17 public could still come in, so it's still
18 uninhabitable for that reason. So to argue --

19 MS. HALL: And whatever argument he's making
20 about, oh, my gosh, I can't have the placard on the
21 building because it's hindering me from rereating
22 it, we have the same issue but from a different
23 side. Our issue is you take the placard off, they
24 move people back in.

25 MR. COMPO: Yeah.

1 MS. HALL: And then we're facing --

2 MR. LEAVITT: And they leave it as it is.

3 MR. MIDDLETON: Right.

4 MS. HALL: They leave it as is. So, like,
5 they took the placard off. Now we can move
6 somebody back in.

7 MR. LEAVITT: Yeah.

8 MS. HALL: So there's no evidence. There's no
9 indicia of the issues in that structure. That
10 green placard serves as a notification to a
11 prospective tenant that there's something wrong in
12 that building.

13 That placard comes off. The tenant gets in
14 there. They pay the deposit and they're stuck.
15 And do you know how long it takes us? We have to
16 find the owner. We have to give them a notice. We
17 have to wait the statutory time period. So then
18 we're kicking the can down the road for six months
19 while he is earning money renting that unit in
20 substandard conditions to an unsuspecting tenant.
21 That's why we don't take the placard down until we
22 can verify that those conditions have been
23 corrected because it happens all the time.

24 MS. PHANEUF: You know, the violation that's
25 issued on the 15th seems to be so clear, and the

1 play on words going on here that revolves around
2 whether it was occupied or unoccupied isn't the
3 language that's used in the portion of the code
4 that's quoted here, Section 105 --

5 MS. HALL: Correct.

6 MS. PHANEUF: -- of the USBC. It just states
7 that the code official has placarded the building
8 structure or unit as unsafe or unfit for human
9 habitation. It's not saying that it -- it's not
10 declaring whether it's occupied or not. It's just
11 that it is not safe to be occupied.

12 MS. HALL: Correct.

13 MS. PHANEUF: That's my interpretation of
14 this.

15 MS. HALL: That's correct. And the reason --

16 MS. PHANEUF: So the play on the word of
17 occupancy is just --

18 MR. DEBBAS: It's unfit to be --

19 MS. PHANEUF: -- completely off.

20 MS. HALL: That's right. And the reason --

21 MS. PHANEUF: Derailing the process.

22 MS. HALL: You know, the statute requires us
23 to issue the notice to the owner or person in
24 charge of the property. That's the landlord.

25 MS. PHANEUF: Yes.

1 MS. HALL: But the poor tenant has no idea
2 what's going on in there.

3 MS. PHANEUF: Right.

4 MS. HALL: You know, we have unsavvy
5 tenants --

6 MR. LEAVITT: Sure.

7 MS. HALL: -- that show up, and they think
8 they're getting --

9 MR. MIDDLETON: A deal.

10 MS. HALL: -- a deal and they're getting a
11 good place to live. And they're stuck in these
12 horrific conditions.

13 MS. PHANEUF: Yeah.

14 MR. LEAVITT: So have these matters not been
15 resolved yet?

16 MR. MIDDLETON: Not at all.

17 MR. LEAVITT: They won't fix it?

18 MS. PHANEUF: They have not fixed it.

19 MR. DEBBAS: They don't fix it. That's the
20 problem.

21 MS. HALL: And the problem we have is that
22 we've met with them. We have attempted. The State
23 Board said, can't you meet with them? And we said,
24 we've met with them a lot. We always try to work
25 things out. We're very agreeable to working things

1 out. In fact, I've been here a long time, and we
2 probably have a handful -- I've been here 30 years,
3 and I can count on one hand how many hearings we've
4 had before this board. But the problem we have is
5 they have stated on numerous occasions we are not
6 going to fix the heat. And guess what? We're not
7 fixing anything else. So then what do we do?

8 MR. LEAVITT: Why are they saying this? I
9 don't get it.

10 MS. HALL: I don't get it either.

11 MR. MIDDLETON: And she will take it back up
12 to the board -- to the State Board. And she will
13 sit up there, and she will argue the point of we
14 don't have to have heat at this time of year.

15 MR. COMPO: So I'd like to -- will you address
16 that?

17 MR. MIDDLETON: And -- and --

18 MR. COMPO: But doesn't the code say they have
19 to have a working heating system?

20 MR. DEBBAS: Regardless of the time of the
21 year?

22 MS. HALL: That is correct. Now, she is --
23 she will argue that there's certain --

24 MR. MIDDLETON: So what's the section she
25 arguing? Where's she getting that?

1 MS. HALL: She's arguing a totally different
2 section.

3 MS. JOHNSON: 602.1.

4 MS. HALL: 602.1. She was not cited for that.
5 We said we don't want to get in the middle of that
6 because, you know, a tenant could choose not to
7 turn the heat on.

8 MR. MIDDLETON: Right.

9 MS. HALL: But that heating system should be
10 there for them to be able to turn on. So they were
11 cited under 603.1 and 605.1. So she keeps arguing
12 a point that is not even before this board. It's
13 not relevant. She was not cited for that.

14 MR. COMPO: So let me ask you this. The claim
15 he made -- if they take the heating system
16 completely out --

17 MR. DEBBAS: It's still not good.

18 MS. HALL: That's still a violation.

19 MR. COMPO: Well, that's what I understand.

20 So I'm --

21 MS. PHANEUF: Well, and she claims here in her
22 email that she doesn't plan to provide heat any
23 longer to the tenants.

24 MR. MIDDLETON: Yeah. Yeah.

25 MS. HALL: Right. And you know what? There's

1 some case law out of the State Technical Review
2 Board that if it's owner occupied, they can choose
3 not to have heat at all.

4 MR. DEBBAS: But it's not.

5 MS. HALL: But it's not. And the board was
6 clear to us. The board members indicated on appeal
7 and they told -- they indicated that -- they told
8 her that that is the way that they have ruled in
9 the past, that if it's tenant occupied, a heating
10 facility has to be provided. If it's owner
11 occupied, you can live off the grid. You can just
12 have a fireplace, but not if it's tenant occupied.

13 So that is why I provided you a copy of the
14 lease. There's no question this was a tenant.
15 They've admitted today that it was a tenant and
16 that -- they admitted today it was rental property.
17 So there's no --

18 MS. PHANEUF: And they admitted that this
19 whole process got started because the tenant
20 complained.

21 MS. HALL: That is correct.

22 MR. MIDDLETON: And then they argued the point
23 that the tenant was living there past their --
24 whatever it's called. Past their rent time, but
25 they're not considered a tenant at that time, so

1 they can't have these. Like, really?

2 MS. PHANEUF: So --

3 MR. MIDDLETON: Knowing the State Board, they
4 kick it back for the timely manner. I don't think
5 they would kick this back.

6 MS. HALL: So for the -- with respect to
7 her -- the issues that she raised -- I think she
8 raised three. And the first one was an appeal of a
9 placard under 603.1 and 605.1, and I would argue,
10 based on all the evidence you've heard today, that
11 the City's action on that -- on that ground -- that
12 ground number one that she raised was proper
13 because 603.1 and 605.1 requires you to have an
14 operable heating system.

15 And they admitted and the evidence before you
16 today is that they do not have an operable heating
17 system. So we ask that you uphold the decision or
18 the ruling or whatever you want to call it of the
19 property maintenance code official on that point.

20 With respect to number -- the second point,
21 appeal of a refusal to reinspect. We've heard
22 evidence today that the City did reinspect. The
23 inspections failed. We offered to inspect the
24 property on numerous occasions, and they would not
25 let us in the building. In fact, they told us they

1 were not going to fix any of the violations.

2 And then I think the last argument was
3 appealing the decision that requires them to
4 install a heating system. It's our argument,
5 again, that the statutory language says you have to
6 have an operable heating system. Both those code
7 sections I've cited require that, and I would say
8 especially in light of the fact that this is tenant
9 occupied, that this is rental property.

10 So on all three arguments that are before the
11 board on the hearing on the merits today, we would
12 ask that you uphold the decision of the property
13 maintenance code official.

14 MR. LEAVITT: Okay. Any further discussion?
15 Do I hear a motion on our behalf?

16 MR. COMPO: So moved that we uphold the three
17 sections, 603.1, 605.1, and the --

18 MR. MIDDLETON: Reinspection.

19 MR. COMPO: -- the reinspection.

20 MR. LEAVITT: Is there a second to that
21 motion?

22 MS. PHANEUF: Second.

23 MS. HALL: So on all three bases, that's your
24 motion, to uphold the decision?

25 MR. LEAVITT: All three bases?

1 MS. PHANEUF: Yes.

2 MR. COMPO: Yes.

3 MR. LEAVITT: Second the motion?

4 MR. COMPO: I do.

5 MS. PHANEUF: Second.

6 MR. LEAVITT: Any discussion? All in favor
7 say aye.

8 MS. PHANEUF: Aye.

9 MR. COMPO: Aye.

10 MR. DEBBAS: Aye.

11 MR. MIDDLETON: Aye.

12 MR. LEAVITT: Any opposed? Well, you heard
13 it.

14

15 (The proceedings concluded at 2:28 p.m.)

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REPORTER'S CERTIFICATE

COMMONWEALTH OF VIRGINIA,
CITY OF VIRGINIA BEACH, to-wit:

I, Christina M. McDowell, certify that the
foregoing is a correct transcript of the proceedings had
before the said court on the date aforementioned.

Given under my hand this ____ day of _____,
2018.

Christina McDowell
Court Reporter

My Commission expires May 31, 2019.
Notary Registration Number: 7106400

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<p>P</p> <p>p.m [1] 63/15</p> <p>package [1] 23/22</p> <p>packet [5] 18/14 18/16 23/10 24/14 24/24</p> <p>page [2] 2/7 21/19</p> <p>paid [2] 7/22 8/21</p> <p>paint [1] 50/10</p> <p>paper [1] 18/25</p> <p>part [2] 10/23 41/1</p> <p>particular [5] 12/17 25/25 26/3 30/1 50/14</p> <p>partly [1] 5/8</p> <p>pass [3] 30/4 32/5 32/13</p> <p>past [4] 38/1 60/9 60/23 60/24</p> <p>path [1] 40/12</p> <p>patronize [1] 17/5</p> <p>pauper [1] 49/9</p> <p>pay [1] 55/14</p> <p>paying [3] 19/24 49/9 50/7</p> <p>pending [1] 22/15</p> <p>people [10] 13/3 13/4 16/22 26/13 45/16 45/17 50/13 50/15 50/19 54/24</p> <p>performing [1] 22/3</p> <p>period [3] 22/14 24/1 55/17</p> <p>periods [1] 31/17</p> <p>permit [12] 8/14 12/24 13/1 13/14 18/8 30/3 30/3 30/5 30/6 30/21 30/22 35/10</p> <p>permits [2] 13/7 26/10</p> <p>person [3] 42/1 46/10 56/23</p> <p>perspective [1] 6/9</p> <p>Phaneuf [1] 1/15</p> <p>phone [2] 45/16 50/12</p> <p>picture [1] 50/10</p> <p>pictures [1] 24/1</p> <p>piece [1] 21/16</p> <p>PIN [1] 30/21</p> <p>placard [51] 4/23 4/24 7/18 7/19 7/21 8/2 8/4 9/5 9/8 9/9 10/1 11/16 11/20 12/20 13/13 14/5 14/9 14/20 15/6 15/24 18/5 19/15 21/12 21/14 26/13 27/1 27/2 28/7 28/24 29/6 33/22 34/18 34/21 34/24 38/14 40/15 41/23 46/20 49/25 52/2 52/21 53/13 54/1 54/16 54/20 54/23 55/5 55/10 55/13 55/21 61/9</p> <p>placarded [15] 6/10 6/16 14/23 15/2 20/1 22/8 25/3 26/8 35/17 41/6 41/14 45/6 49/21 52/9 56/7</p> <p>placarding [1] 25/3</p> <p>placards [2] 14/8 33/3</p> <p>place [4] 11/22 21/11 40/13 57/11</p> <p>placed [5] 7/19 7/21 21/12 21/14 25/5</p> <p>places [1] 12/19</p> <p>plan [3] 15/11 37/20 59/22</p> <p>play [6] 17/13 44/3 44/18 52/12 56/1 56/16</p> <p>please [2] 24/18 32/3</p> <p>plumbing [1] 53/23</p> <p>point [10] 18/2 19/18 22/14 27/5 28/10 58/13 59/12 60/22 61/19 61/20</p> <p>poor [1] 57/1</p> <p>portion [1] 56/3</p> <p>possible [1] 32/1</p>	<p>post [1] 10/25</p> <p>posted [2] 4/23 32/16</p> <p>premises [1] 19/25</p> <p>present [2] 1/19 20/15</p> <p>presented [1] 4/21</p> <p>pressure [3] 30/9 32/7 32/10</p> <p>pretty [1] 51/21</p> <p>previous [1] 40/8</p> <p>previously [3] 23/9 23/16 25/1</p> <p>Pro [1] 1/14</p> <p>probably [3] 8/2 28/18 58/2</p> <p>problem [12] 10/2 10/23 26/23 26/25 33/13 38/11 42/13 47/20 48/9 57/20 57/21 58/4</p> <p>proceedings [3] 1/10 63/15 64/8</p> <p>process [6] 8/15 12/21 34/25 40/25 56/21 60/19</p> <p>professional [1] 9/21</p> <p>profiting [1] 27/9</p> <p>promise [7] 11/15 11/20 11/21 15/22 15/23 34/22 34/22</p> <p>promises [2] 11/19 34/23</p> <p>proof [1] 43/22</p> <p>proper [2] 22/11 61/12</p> <p>properties [4] 8/16 9/24 40/21 51/1</p> <p>property [70]</p> <p>prospective [1] 55/11</p> <p>protect [1] 41/2</p> <p>protecting [1] 41/4</p> <p>proved [1] 41/11</p> <p>provide [7] 5/19 6/5 14/12 28/15 28/16 31/16 59/22</p> <p>provided [3] 23/17 60/10 60/13</p> <p>provision [2] 6/16 6/17</p> <p>provisions [3] 28/18 35/18 35/19</p> <p>public [12] 6/21 6/23 10/14 25/16 42/18 51/10 51/14 51/15 53/20 54/9 54/12 54/17</p> <p>pull [3] 12/24 18/8 39/4</p> <p>pulled [4] 8/14 13/1 13/7 35/10</p> <p>pumped [1] 32/12</p> <p>purposes [1] 26/12</p> <p>put [15] 8/19 8/20 10/13 11/22 14/5 14/7 14/9 15/11 29/17 40/24 41/22 45/13 48/7 49/25 54/1</p> <p>putting [5] 9/24 10/2 10/20 37/20 53/12</p>	<p>recorded [1] 21/6</p> <p>recourse [1] 27/11</p> <p>red [1] 26/18</p> <p>refer [1] 14/4</p> <p>refusal [2] 5/1 61/21</p> <p>refused [11] 5/4 7/6 8/1 8/10 8/11 9/19 18/1 18/2 23/3 24/7 34/5</p> <p>Regardless [1] 58/20</p> <p>Registration [1] 64/19</p> <p>regular [1] 34/25</p> <p>reinspect [8] 5/1 5/5 7/6 17/23 23/4 23/5 61/21 61/22</p> <p>reinspected [4] 5/4 5/6 18/5 39/18</p> <p>reinspection [7] 7/5 35/4 35/4 35/14 36/16 62/18 62/19</p> <p>reinspections [1] 23/8</p> <p>reiterate [1] 51/25</p> <p>related [1] 26/2</p> <p>relevant [2] 17/15 59/13</p> <p>relying [1] 14/20</p> <p>remember [1] 3/7</p> <p>remodel [1] 38/8</p> <p>remodeling [2] 12/21 40/25</p> <p>remodels [1] 10/20</p> <p>remove [11] 11/16 11/20 15/3 15/6 15/24 27/1 34/21 38/20 38/22 40/14 43/3</p> <p>removed [7] 16/2 16/3 18/5 21/2 28/14 36/15 36/22</p> <p>removing [1] 36/24</p> <p>rent [8] 9/7 10/15 11/16 12/11 19/24 38/6 48/16 60/24</p> <p>rental [8] 12/11 12/12 15/13 19/6 38/3 42/2 60/16 62/9</p> <p>renting [3] 10/17 10/18 55/19</p> <p>repair [8] 22/5 25/23 26/15 34/2 40/14 50/13 50/15 50/15</p> <p>repaired [3] 22/23 22/24 23/2</p> <p>repairing [2] 7/24 50/17</p> <p>repairman [1] 9/12</p> <p>repairs [10] 7/4 10/20 13/2 17/17 17/19 17/25 24/4 37/24 42/25 50/20</p> <p>repeatedly [1] 15/6</p> <p>rephrase [1] 5/24</p> <p>replace [2] 22/5 40/13</p> <p>report [3] 23/16 23/20 23/21</p> <p>REPORTED [1] 1/25</p> <p>reporter [4] 18/16 45/3 52/13 64/15</p> <p>REPORTER'S [1] 64/1</p> <p>represent [1] 35/3</p> <p>request [1] 30/22</p> <p>requested [2] 30/8 30/18</p> <p>require [6] 5/10 14/24 21/5 35/19 35/22 62/7</p> <p>required [2] 21/1 53/23</p> <p>requirement [1] 22/4</p> <p>requires [9] 5/7 5/16 6/17 10/24 18/6 50/3 56/22 61/13 62/3</p> <p>requiring [1] 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RESIDENTIAL LEASE

This agreement made this 10 day of (mo.) 06, (yr.) 2016, between
J. & M. Gaines (hereinafter called management) and
Chanel M. Niles (hereinafter called Resident). Management leases to resident, and resident rents
from management, residential unit 2410 West Ave Norfolk (hereinafter referred to as premises), under
the following conditions.

1. **APPLICABLE LAW.** This lease shall be governed by the Virginia Residential Landlord and Tenant Act (Virginia Code Title 55, Chapter 13.2). Tenants are advised to read the Act as well as Virginia Code Title 55, Chapter 13, before signing this lease.
2. **TERM.** It is the intent of all parties that this lease is for a period of 6 months. The term of this lease shall run from June 10, 2016, through November 10, 2016. After the expiration of this term, Management may allow the Tenant to remain in the premises with month to month Tenancy.
3. **RENT.** Rent is payable in advance at a rate of Seven Hundred fifty dollars (\$750), per month, during the term of this agreement on the first of each month; at the office of management or at such other place management may designate.
4. **RENEWAL TERM:** This lease is for a period of 6 months and the last month's rent will apply only to the last month of the lease period. Should the lease be breached by the resident, both the last month's rent and the indemnification deposit shall be forfeited as liquidated damages and the resident will owe rent through the last date of occupancy.
5. **HOLDOVER:** Resident shall deliver possession of the premises in good order and repair to management upon termination or expiration of the agreement.
6. **LATE FEE.** Tenants shall pay a late fee of 35.00 of any rental amount not received at the payment address by 5:00 pm on the fourth day after the date the rent is due. (If rent is due on the first, a late fee will be assessed if rent isn't received by 5:00 pm on the fifth.)
1. **DISHONORED CASHIERS CHECKS/MONEY ORDERS.** If a check paid by, or on behalf of, a Tenant is returned for insufficient funds or for any other reason not the fault of Landlord or Landlord's agent, Landlord may require rent payments to be made by cash, money order, cashier's check, or certified check. Tenants shall pay a service charge of \$25.00 for each such returned check. This service charge is in addition to any applicable late fee that is charged.

8. **INDEMNIFICATION DEPOSIT.** Management acknowledges that he has received the sum of seven hundred fifty (\$ 750) from Tenants as a security deposit. Deposit will be returned to resident less a \$50.00 carpet cleaning charge within 45 days of the resident vacating if;

- (a.) Lease term has expired or has been terminated by all parties
- (b.) All monies due management by resident has been paid
- (c.) The premises is not damaged and is left in original condition, normal wear and tear is expected, and
- (d.) Management is in receipt of final bills on all utilities (I.e. water, gas, etc.)
- (e.) Deposit will not be returned if Resident leaves before the lease time is completed. Deposit may be applied by management to satisfy all or part of resident's obligations and such act may not prevent management from claiming damages in excess of the deposit. Resident may not apply deposit to any payment of rent.

9. **MOVE-IN CONDITION.** Landlord shall provide the first Tenant to take possession of the premises with a "Move-In/Move-Out Condition Report" form. That Tenant shall complete the form and return it to Landlord within five days. Unless Landlord objects within five days of his receipt of the completed form OR if the tenant does not return the form to the landlord within the specified timeframe, the report shall be deemed conclusive evidence that the premises are as described in the report.

10. **DELIVERY OF POSSESSION.** Landlord shall be ready to deliver possession of the premises to Tenants at the start date of the tenancy. Landlord shall be responsible for having hold-over tenants evicted.

If Landlord fails to deliver possession and such failure is not willful, Landlord shall have ten days to remedy the situation and deliver possession. Rent shall abate until Landlord delivers possession, but Landlord shall not be responsible for any other damages to Tenants. If Landlord fails to deliver possession by the end of the ten-day period, Tenants may, at any time before possession is delivered, send Landlord written notice of termination, and the lease shall thereby be immediately terminated. Within five days of delivery of the termination notice, Landlord shall return all prepaid rent, application fees, and deposits.

11. **SUBLEASES & ASSIGNMENTS.** Tenants shall not sublease the premises or assign this lease without the prior, written permission of the Landlord. Landlord shall not permit a sublease or assignment without the approval of all Tenants. Landlord shall not unreasonably deny permission to sublease or assign. Landlord may charge a \$32 application fee for each sublease or assignment requested and an additional \$50 administrative fee for each executed sublease or assignment.

12. **LANDLORD'S LIEN:** In consideration of the mutual benefits arising under this Lease and in addition to any statutory lien for rent in Landlord's favor, Landlord (the secured party for purposes hereof) shall have and Tenant (the debtor for purposes hereof) hereby grants to Landlord, an express contract lien and a continuing security interest to secure the payment of all Rent due under the Lease from Tenant, upon all goods, wares, equipment, fixtures, furniture, inventory, accounts, contract rights, chattel paper, automobile(s) and other personal property of Tenant (and any transferees or other

occupants of the Premises) presently or hereafter situated on the Premises and upon all proceeds of any insurance which may accrue to Tenant by reason of damage or destruction of any such property. Except upon expiration

of the Term where no default exists in the payment of Rent or other sums due from Tenant hereunder, and except for reasonable replacements from time to time, Tenant shall not remove any of Tenant's property from the Premises, other than pursuant to sale thereof in the regular course of its business, without the prior written consent of Landlord, and Landlord shall have the right and privilege, at its sole option and discretion, to take possession of all property of Tenant in the Premises, to store the same in the Premises, or to remove it there from and store it in such place as may be selected by Landlord, at Tenant's risk and expense, in accordance with such lien and of any rights of distraint it may possess against Tenant's property. In the event of a default under this Lease, Landlord shall have, in addition to any other remedies provided herein or by law, all rights and remedies under the Uniform Commercial Code of the state in which the Premises is located, including without limitation the right to sell the property described in this paragraph at public or private sale upon 10 days' notice to Tenant, which notice Tenant hereby agrees is adequate and reasonable. Within five (5) days after request by Landlord, Tenant hereby agrees to execute such other instruments necessary or desirable in Landlord's discretion to perfect or continue the security interest hereby created. Any statutory lien for rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereto. Landlord and Tenant agree that this Lease and the security interest granted herein serve as a financing statement, and a copy or photographic or other reproduction of this paragraph of this Exhibit may be filed of record by Landlord and have the same force and effect as the original. Tenant warrants and represents that the collateral subject to the security interest granted herein is not purchased or used by Tenant for personal, family or household purposes. Tenant further warrants and represents to Landlord that the lien granted herein constitutes a first and superior lien and that Tenant will not allow the placing of any other lien upon any of the property described in this paragraph without the prior written consent of Landlord. The exercise of the foregoing remedy by Landlord shall not relieve or discharge Tenant from any deficiency owed to Landlord which Landlord has the right to enforce pursuant to any other provision of this Lease.

13. USE OF PREMISES. Only Tenants and Tenants' minor children are allowed to occupy the premises. Tenants shall not permit any other persons to occupy the premises. "Occupy" is defined as residing, living, or staying on the premises overnight for more than seven nights in a row or for more than fourteen nights in a twelve-month period.

Tenants shall use the premises only as a residential dwelling. Tenants shall not use the premises or permit any guests to use the premises for any unlawful activities or to unreasonably interfere with the rights, comforts, or conveniences of their neighbors or other Tenants. Tenants shall not host any party or gathering of more than fifteen (15) people at any time.

14. LOCKOUTS: In the event of a lockout, if a locksmith is called to the premises the resident will be responsible for any reasonable fees assessed by the locksmith and/or maintenance worker.

15. **ATTORNEY'S FEES AND LITIGATION**. If any party to this lease takes legal action against the other for breach of this lease, the prevailing party shall be entitled to a reasonable attorney's fee and court costs, in addition to any amounts awarded by the court for damages and court costs.

16. **RESERVATION OF RIGHTS**. If rent is unpaid when due and Tenants fail to pay rent within five days after written notice of the non-payment is provided, Landlord may terminate the lease and proceed to obtain possession of the premises in accordance with law. Acceptance of rent after the five-day period shall not act as a waiver of Landlord's rights and Landlord hereby reserves all rights to receive payment of rent after the five-day notice and proceed in court for possession of the premises and all other remedies allowed by law.

17. **PROPERTY DAMAGE & MAINTENANCE**. Tenants shall promptly notify Landlord of any defects in or damages to the plumbing, sanitary, electrical, gas, heating, or cooling systems as well as any leaks in the roof or evidence of structural damage. Tenants shall not repair these defects or damages without obtaining the prior, written permission of Landlord, which Landlord may reasonably refuse; however, Tenants shall take reasonable steps to prevent additional damage.

Management shall make necessary repairs to the exterior with reasonable promptness after receipt of written notice from resident. Resident shall make all necessary repairs to the interior and keep premises in a safe, clean, and sanitary condition. Resident shall make contact with all necessary repair or service people and will be responsible for paying the first \$25.00 of any charge. Resident may not remodel or paint or structurally change, no remove any fixture there from without written permission from management.

18. **RIGHT OF ACCESS**: Management shall have the right to access the residence for inspection and repair or maintenance during reasonable hours. Management may enter at any time to protect life and prevent damage of property.

19. **EXTENDED ABSENCES & ABANDONMENT**. If all of the Tenants will be absent from the premises for a period in excess of ten (10) days, Tenants shall give Landlord advance, written notice of the absence.

20. **MOVE-OUT INSPECTION**. Tenants may request to be at a move-out inspection to be held within seventy-two (72) hours of Tenants' delivery of possession to Landlord. Tenants' request shall make in writing at least two weeks in advance.

21. **RENTER'S INSURANCE**. Landlord is not responsible for damages to Tenants' property unless caused by Landlord. Tenants are REQUIRED to obtain sufficient renter's insurance to cover the loss of their property along with sufficient liability coverage to cover accidental damage to Landlord's or neighbors' property caused by Tenants.

22. **PETS**. Tenants may keep *one cat and one aquarium of fish up to 10 gallons*. Other Animals, birds or any other pets are not allowed without written approval by management.

23. **NOTICES**: All notice required by this agreement shall be in writing and must be delivered personally or mailed by registered or certified mail.

24. **MORTGAGEES RIGHTS:** Residents rights under this agreement shall at all times be junior and subject to any deed to secure debt which is now or shall hereafter be placed on the premises. If Requested, resident shall execute promptly any certificate that Management may request to specifically implement the subordination of this paragraph.

25. **WAIVER OF BREACH.** No waiver of any breach of this lease on any one occasion shall be construed to operate as a general waiver of another breach on a subsequent occasion. If any breach occurs and is later settled by the parties, this lease shall continue to bind the parties as it is written.

26. **JOINT AND SEVERAL LIABILITY.** All Tenants shall be jointly and severally liable for all Tenant obligations (rent, damages, and other). (The Landlord may collect the entire amount due from any Tenant, no matter which Tenant caused the damages or failed to pay their share of the rent.)

27. **ENTIRE AGREEMENT & SEVERABILITY:** This agreement and any attached addendum constitute the entire agreement between the parties and no oral statements shall be binding. It is the intention of both parties that if any part of this rental agreement is invalid, for any reason, such invalidity shall not void the remainder of the rental agreement.

28. **RULES & REGULATIONS:** Tenants acknowledge receipt of Landlord's Rules. Tenants shall comply with all written Rules provided to the Tenant. Landlord may, with reasonable written notice to Tenants, modify these rules as allowed by law.

(a.) Signs: Residents shall not display any signs, exterior lights, or markings. No awnings or other projections shall be attached to the outside of the building.

(b.) Locks: Resident is prohibited from adding locks to, changing, or in any way altering the locks installed on the doors. All keys must be returned to management of the premises upon termination of occupancy.

(c.) Entrances, walks, lawns or driveway shall not be obstructed or used for any other purpose than ingress and egress.

(d.) Parking- non-operative vehicles are not allowed on the premises. Any such vehicle shall be removed from the premises at the expense of the resident owning the same, for storage or public or private sale, at management's option, and resident owning the same shall have no recourse against management therefore.

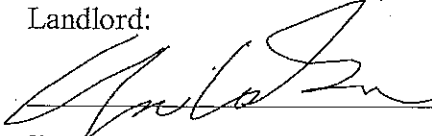
(e.) Guest – Resident shall be responsible and liable for the conduct of his/her guests. Act of guests in violation of management's rules and regulations may be deemed by management a breach by Resident. No guest may stay longer than 10 days without permission of management; otherwise a \$10.00 per day guest charge will be due to management.

(f.) Noise- Resident must maintain noise at a level that does not interfere with neighbors.

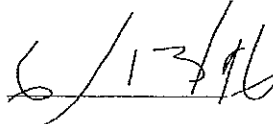
(g.) Resident shall maintain his/her shrubbery/grass. In the event management has to maintain the shrubbery and/or grass at the premises the resident will be required to pay reasonable fees as assessed by landscaper.

We, the undersigned, hereby represent that we have read this entire lease and agree to be bound by its terms and conditions.

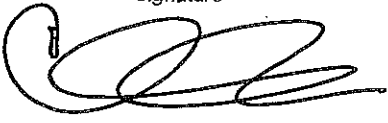
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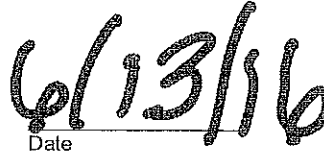
Signature



Date



Signature



Date

Tenants:

Brandon Lynn

Siaga Niles

Brooklyn Niles

Santana Niles

This is a 6 page document, it and any attached addenda (um) represent the full agreement herein.

Johnson, Joseph

From: Makiba <makibam@aol.com>
Sent: Wednesday, February 08, 2017 9:26 AM
To: Johnson, Joseph
Subject: RE: 2410 West Avenue
Attachments: michael and sons.pdf

Hello,

Please see the attached letter from Michael and Sons showing that we have been actively diagnosing and addressing the heat issue. He also stated that the tenant has piled junk on and around our unit, has not been changing the filters as required by her lease, and broke the circuit breaker. The electrician fixed the breaker yesterday, and the heat is operable.

Thanks,

-----Original Message-----

From: Johnson, Joseph [mailto:Joseph.Johnson@norfolk.gov]
Sent: Tuesday, February 07, 2017 2:41 PM
To: makibam@aol.com
Subject: FW: 2410 West Avenue

Attached is the Code Enforcement Case and the Nuisance Case for trash and debris.

-----Original Message-----

From: CDPX6@norfolk.gov [mailto:CDPX6@norfolk.gov]
Sent: Tuesday, February 07, 2017 2:37 PM
To: Johnson, Joseph <Joseph.Johnson@norfolk.gov>
Subject: Message from "CDPX6"

This E-mail was sent from "CDPX6" (Aficio MP C2551).

Sent Date: 02/07/2017 14:37:24 (-0500)
Originator: CDPX6@norfolk.gov



Michael and Son Services
 1229 S. Military Highway
 Chesapeake, VA 23320
 Phone: (757) 275-8599
 VA 2701038423A

Fax: (757) 368-2085

IF YOU CANT WE CAN - www.michaelandsonnorfolk.com

Jay. Gaines
 2410 West Ave
 Norfolk VA 23504

Date: 02/03/2017
 Technician: Matthew Ryan Pfeifer
 Ticket#: 186917NOR



Diagnostic Notes

FOUND 2TON DUCANE GAS PK IN OPS, CHECKED FILTER ITS DIRTY STAT IS OLD AND DUCTS ARE BEAT UP AND DIRTY. PKGE UNIT LOOKS MANGLED RAIN SHIELD IS CRUSHED AND UNITS INTEGRITY IS IN SHAMBLE LOTS OF RUST ON BURNERS AND INDUCER. CHECKED EXCHANGER FOUND ZERO CRACK OR HOLE. FOUND OM AT DISCONNECT FROM PANEL COULD NOT FIND BREAKER FOR UNIT I THINK NREAKER TRIPPED AND TENANT TRIED RESETING AND IT POPPED LOOSE OFF BUSS AND FELL BEHINF PAÑEL. NEED ELECTRICIAN TO TAKE LOOK AT WHY WE ARENT GETTING HIGH VOLTAGE TO GAS PK. UNIT IS IN NEED OF SERIOUS UP GRADE UNIT HAS LOTS OF TOYS, DEBRIS, LAWN EQUIP THROWN ON AND NEAR UNIT UNIT HAS BEEN IN SERIOUS NEGLECT.

Right now your charges for today are: \$89.00

Your priorities as a result of this visit	Qty	Price	SA Price	Approve	Chose Altern.	Future Rec.	Declined
				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sub Total							\$0.00
Tax 0.00%							\$0.00
Total							\$0.00

Customer Signature

Approval Total:

NO OTHER WORK TO BE PERFORMED OR COMPLETED AS EXPRESSLY STATED HEREIN ABOVE

WAIVER OF RECISSION: DUE TO EMERGENCY REPAIR, I WAIVE MY RIGHT OF RECISSION; SO WORK CAN BE DONE IMMEDIATELY. I UNDERSTAND MY RIGHT OF RECISSION AND HAVE RECEIVED A COPY OF SAME.

You, the buyer, may cancel this transaction any time prior to midnight of the third business day after the date of this transaction. See attached notice of cancellation form for explanation of this right. If the buyer cancels this contract after the third business day from the date of this transaction or at any time after signing a waiver of buyer's rights of rescission of said contract, buyer agrees to pay the company shall be entitled to receive as liquidated damages a sum equivalent to (25%) twenty five percent of the entire contract price.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS AND SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

ANY REFERENCE TO "THE COMPANY" IN THIS CONTRACT SHALL BE CONSTRUED TO MEAN THE COMPANY.

TERMS: NET CASH UNLESS OTHERWISE STATED AGREEMENT.

THE UNDERSTANDING REPRESENTS THAT (HE IS) (SHE IS) (THEY ARE) THE (OWNER) (OWNERS) OR HAVE AUTHORITY TO ACT ON BEHALF OF THE OWNER(S) OF THE PROPERTY DESCRIBED IN THIS CONTRACT. IT IS UNDERSTOOD THAT THE ENTIRE CONTRACT IS CONTAINED IN THIS AGREEMENT AND THAT NO OTHER AGREEMENT OR UNDERSTANDING, VERBAL OR WRITTEN, SHALL BE BINDING ON THE COMPANY, AND THAT THIS CONTRACT BECOMES EFFECTIVE ONLY UPON WRITTEN ACCEPTANCE BY THE COMPANY AFTER WHICH THIS CONTRACT IS NOT

Johnson, Joseph

From: Makiba <makibam@aol.com>
Sent: Thursday, March 09, 2017 8:54 AM
To: Johnson, Joseph; Hall, Cynthia; Johnson, Sherry
Subject: 2410 West ave

Hello,

Please be advised that we have removed the heating system at 2410 West Ave., and will no longer be providing heat to tenants (as permitted by the USBC).
Please remove the placard.

Thanks,

Sent from my iPhone

Hall, Cynthia

From: Fortner, Richard
Sent: Thursday, May 17, 2018 1:34 PM
To: makibam@aol.com; Makiba Gaines
Cc: Hall, Cynthia; Johnson, Sherry
Subject: 2410 West Ave Appeal Resolution
Attachments: 2410WestAveAppeal5_14_18.pdf

Mr. and Mrs. Gaines,

Attached for your records is the completed LBBCA resolution from Monday's hearing.

Best regards,

Rick Fortner, CBO, CFM
Building Commissioner

THE CITY OF
NORFOLK
Department of City Planning,
Building Safety Division
401 Monticello Ave, First Floor
Norfolk, VA 23510
757-664-6511 office
757-620-2667 mobile

Connect with us:
www.norfolk.gov



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**ADDITIONAL DOCUMENTS
AND WRITTEN ARGUMENTS
SUBMITTED BY
JOSHUA AND MAKIBA GAINES**

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VIRGINIA:

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

IN RE: Joshua and Makiba Gaines
Appeal No. 18-05

APPELLANT'S SUPPLEMENTAL RESPONSES AND CORRECTIONS TO SUGGESTED
SUMMARY OF THE APPEAL

1. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

2. CORRECTION REQUESTED: The dwelling was confirmed vacant on February 10, 2017.

Therefore, no tenant was relocated on February 15, 2017.

2.5 SUPPLEMENT REQUESTED: The Gaineses hired Michael and Sons to repair the heating system on February 23, 2017. However, the repairman refused to enter the property due to the notice of unsafe or unfit notice posted on the door.

3. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

3.5 SUPPLEMENT REQUESTED: On March 6, 2017, the Gaineses removed the mechanical appliance previously cited for violations of Sections 603.1 and 605.1 of the Virginia Maintenance Code and requested a reinspection.

4. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

5. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

6. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

7. CORRECTION REQUESTED: The Gaineses made legal arguments that case law provides that the language included in the Virginia Maintenance Code does not require a landlord to furnish heat absent an agreement to do so. As to the facts, the Gaineses argued that (1) there was no tenant residing in the property when it was placarded and at the time of the hearing, (2) the heating system was removed on March 6, 2017, thereby resolving any defect previously existing under Section 605, and that (3) the City failed to reinspect the premises.

8. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

9. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

10. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

10.5 SUPPLEMENT REQUESTED: The property maintenance official has refused to officially reinspect the property with regard to the February 7, 2017 Notice of Violation and Correction Notice under the Virginia Maintenance Code since the property was placarded on February 15, 2017. *See* Email from M. Gaines to George Homewood, March 26, 2017, 9:11 AM.

Suggested Issue for Resolution by the Review Board

1. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.
2. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

July 13, 2018

Respectfully Submitted,

_____/s/_____
Makiba Gaines
Joshua Gaines

VIRGINIA:

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

IN RE: Joshua and Makiba Gaines
Appeal No. 18-05

I. ARGUMENT

The State Technical Review Board (“the Board”) should overturn the decision of the local appeals board because the property maintenance official’s decision to placard the Gaineses’ property was improper for two reasons: (1) the Gaineses corrected violations of Sections 603.1 and 605.1 of the Virginia Maintenance Code (VMC) when they removed the inoperable mechanical appliance from the property on March 6, 2017, and neither Section 603.1 nor 605.1 require correction by installing a new mechanical or electrical appliance; and (2) no condition exists at the property that constitutes a violation of Section 105 (Unsafe or Structures Unfit for Human Occupancy), Section 603.1 (Mechanical Appliances), or Section 605.1 (Installation of Electrical Equipment).

II. DISCUSSION

The Gaineses’ appeal rests largely on statutory construction of regulations incorporated by reference in Part III of the Virginia Maintenance Code. In interpreting the provisions, the Board should apply “the plain meaning of the words [of the regulation] unless the[words] are ambiguous or would lead to an absurd result.” *Wright v. Commonwealth*, 278 Va. 754, 759 (2009). Here, not only does the plain-language of the regulations fail to support the property maintenance official’s unreasonable interpretations and application of the code but upholding the code official’s interpretations would yield absurd results.

A. The Board Should Overturn the Decision of the Local Appeals Board Because the Gaineses Corrected Violations of Sections 603.1 And 605.1 when they Removed the Inoperable Mechanical Appliance on March 6, 2017

1. *Because the plain-language of section 603.1 unambiguously requires a property owner to maintain his currently affixed appliances in a safe and operable condition, the Gaineses corrected the violation when they uninstalled the inoperable appliance on March 6, 2017*

Section 603.1 promulgates a standard by which mechanical appliances, including stoves and fireplaces, must be maintained while the appliance remains affixed to the premises. At the time the property was placarded, Section 603.1¹ read in pertinent part, “All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.” § 603.1. The property maintenance official interprets the provision to impose an obligation on a property owner to furnish specific mechanical appliances in his property rather than to merely maintain an installed mechanical appliance in a safe and operable condition. The property maintenance official’s determination that Section 603.1 requires a property owner to install “mechanical appliances, fireplaces, solid-fuel burning equipment, [and/or] cooking appliances” is not supported by the plain language or logical context of the code. Because Section 603.1 only requires a property owner to maintain his installed mechanical appliances in operable conditions, the Gaineses corrected the violation of 603.1 when they un-installed the appliance on March 6, 2017.

¹ Section 603.1, as amended by regulation published on April 30, 2018, shall now read: Required or provided mechanical equipment, appliances, fireplaces, solid fuel-burning appliances, cooking appliances, chimneys, vents, and water heating appliances shall be maintained in compliance with the code under which the appliances, system, or equipment was installed, kept in safe working condition, and capable of performing the intended function.

VMC § 603.1, 13 Va. Admin. Code 5-63-540 (emphasis added).

2. *Because Section 605.1 unambiguously requires a property owner to install and maintain electrical equipment in a safe and operable manner, the Gaineses corrected the violation when they uninstalled the inoperable appliance on March 6, 2017*

The property maintenance also cited the Gaineses' property with a violation of Section 605.1² (Electrical Equipment Installation), which, at time the violation issued, read, "All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner." *Id.* Again, the City interprets the provision to impose an obligation on a property owner to affix new "electrical equipment, wiring and appliances" to his property, rather than to maintain existing equipment in an operable and safe manner. Again, the property maintenance official's interpretation of the provision is unreasonable. The Board should find that the provision does not impose a requirement on a property owner to affix new equipment to his property, and consequently, the maintenance official may not reach outside the scope of the provision to demand the Gaineses install a new heating system under the provision. Because the text of Section 605.1 only requires a property owner to maintain his installed electrical appliances in a safe and operable manner, the Gaineses corrected the violation of 605.1 when they uninstalled the inoperable appliance.

3. *If the Property Maintenance Official's Interpretation and Unreasonable Application of Sections 603.1 and 605.1 were Permitted to Stand, the Result Would Effectively Repeal Portions of Sections 602.2 and 602.4*

In imposing a requirement on property owners to install and maintain heating facilities under Sections 603.1 and 605.1, the property maintenance official evades the exemptions from and exceptions to the heating facility requirement promulgated at Section 602.2. In doing so, the property maintenance official effectively repeals Section 602.2, which provides, in pertinent part:

602.2 Heat supply. Every owner and operator of a Group R-2 apartment building or other residential dwelling who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to

² Section 605.1, as amended by regulation published on April 30, 2018, shall now read, "Electrical components. Electrical equipment, wiring, and appliances shall be maintained in accordance with the applicable building code." § 605.1, 13 Va. Admin. Code 5-63-540.

furnish heat *to the occupants thereof* shall supply heat during the period from *October 15 to May 1* to maintain a temperature of not less than 65°F (18°C) in all habitable rooms, bathrooms, and toilet rooms.

§602.2, 13 Va. Admin. Code 5-63-540, 602.2 (Heating Facilities) (emphasis added).

Although Section 602.2 exempts all property owners from the requirement to furnish heating facilities during the spring and summer months; the property maintenance avoids the statutory exception by imposing the requirement under 603.1 and 605.1 where no such obligation exists. Through an unreasonable application of Sections 603.1 and 605.1, the property maintenance official imposes a requirement on the Gaineses to maintain heating facilities even when the property is vacant and not under the terms of any rental agreement; such an application of the code renders Section 602.2 and its exemptions null and void. Moreover, if the Board does not overturn the decision of the local appeals board, property maintenance officials would be permitted to expand the cooling facilities requirement, promulgated at Section 602.4, to require cooling facilities in vacant structures, during exempted months, and to structures otherwise exempt from the requirement.

The Board must overturn the decision of the local appeals board because the property maintenance official's interpretation of the code is unreasonable and would lead to absurd results in the application of the code statewide.

B. The Board Should Overturn the Local Appeals Board's Decision Because No Condition Exists at the Property That Constitutes a Violation of Section 105 Section 603.1 or Section 605.1

As explained above, the violations cited under Sections 603.1 and 605.1 were corrected when the Gaineses removed the inoperable appliance on March 6, 2017. Moreover, the property does not meet the plain definition of a property "unsafe or unfit for human occupancy" as defined by Section 105 of the Code. The code unambiguously defines a "structure unfit for human occupancy" as:

An existing structure determined by the code official to be dangerous to the health, safety and welfare of the **occupants³ of the structure or the public** because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential equipment, or (ii) the required plumbing and sanitary facilities are inoperable.

³ The Virginia Maintenance Code defines an "occupant" as "any individual living or sleeping in a building, or having possession of a space within a building." VMC § 202.

13 Admin. Code 5-63-510 (emphasis added).

The plain language of the provision precludes a finding that a property is unsafe or unfit for human occupancy unless it is “dangerous to the health, safety, and welfare” of the “occupants of the structure” or “the public.” The property was vacant and not under the terms of any lease agreement when it was deemed unfit for human occupancy and placarded on February 15, 2017. Therefore, the property did not meet the statutory definition of “unfit for human occupancy” unless it posed a threat to the health, safety, and welfare of the public. Yet, at the time, the property was secured against entry and not open to the public when it was placarded; moreover, the Gaineses had no plans or prospects of future tenancies.

An occupied dwelling may be deemed unfit for human occupancy when essential utilities and not the facilities themselves are inoperable, *see Clayton v. State Bldg. Code Tech. Review Bd.*, No. 1847-10-4, 2011 WL 382134, at *4 (Va. Ct. App. Feb. 8, 2011) (examining whether the utilities were operable while determining a property’s fitness). If the property maintenance official’s interpretation of the code were permitted to stand, the unreasonable application of Section 105 would require property owners to not only maintain operable facilities, but to also maintain operable utilities, including water, gas, electrical, and sewage utilities at vacant and unoccupied properties, and such an interpretation is unreasonable.

The Board should overturn the local appeals board’s decision that the property is unfit for human occupancy because the dwelling does not meet the statutory definition provided in Section 105, and the property is not in violation of Sections 603.1 and 605.1.

C. Moreover, the property maintenance official failed to reinspect the premises as required by the Virginia Maintenance Code

In March of 2017, the Gaineses made some changes and repairs to the property in response to the Notice of Violation and Correction Notice issue on February 7, 2017. The property maintenance official continues to claim that the authority conducted official re-inspections, as the Gaineses requested after March 20, 2017. Section 104.5.4 et seq. require a property maintenance official to reinspect and to issue revised notices of violation and notices of correction upon re-inspection and determination that previous violations of the code still exist. The property maintenance official has not removed any violations from the February 7, 2017 notice of violation. Accordingly, if the property maintenance official re-inspected the property after March 20, 2017, then the authority must have copies of the new notices of violation and correction notices issued

upon re-inspection. If the property maintenance official cannot produce copies of such notices, the Board should determine it failed to re-inspect the property after being requested to do so on March 20, 2017.

III. CONCLUSION

The Board is charged with interpreting the provisions of the code for the uniform application of the provisions statewide. The property maintenance official's interpretation of the code would lead to unreasonable and absurd results statewide. Here, because Sections 603.1 and 605.1 require proper installation and maintenance of attached appliances, the Gaineses corrected the violations when they removed the inoperable appliance. The property maintenance official may not demand specific correction not required by the language of the provision. If the property maintenance official's decision were permitted to stand, the result would effectively discard Section 602 because it would permit an official to require what the legislature has already exempted. The Board should overturn the decision of the local appeals board because the statewide application of the property maintenance official's interpretation is unreasonable and would lead to absurd results.

July 13, 2018

Respectfully Submitted,

_____/s/_____
Makiba Gaines
Joshua Gaines

**ADDITIONAL DOCUMENTS
AND WRITTEN ARGUMENTS
SUBMITTED BY
THE CITY OF NORFOLK**

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NORFOLK

Office of the City Attorney

July 13, 2018

BERNARD A. PISHKO
City Attorney
ADAM D. MELITA
HEATHER A. MULLEN
MARY L. NEXSEN
NATHANIEL BEAMAN IV
MARTHA P. MCGANN
CYNTHIA B. HALL
JACK E. CLOUD
DEREK A. MUNGO
TAMELE Y. HOBSON
NADA N. KAWWASS
MICHELLE G. FOY
MATTHEW P. MORKEN
HEATHER L. KELLEY
ERIKKA M. MASSIE
ZACHARY A. SIMMONS
KARLA J. SOLORIA
ALEX H. PINCUS
MICHAEL A. BEVERLY

(via email delivery)

W. Travis Luter, Sr., C.B.C.O.
Assistant Secretary to the State
Building Code Technical Review Board
Senior Construction Inspector II
Department of Housing & Community Development
Division of Building & Fire Regulation
State Building Codes Office
600 East Main Street – Suite 300
Richmond, Virginia 23219

Re: Joshua & Makiba Gaines - Appeal No. 18-05

Dear Mr. Luter:

This is to renew my request that the appeal hearing before the State Technical Review Board (Board) set for August 17, 2018 be continued because I will be out of the state from August 7 to August 27, 2018 moving my daughter to the West Coast for school.

Please note that on June 12, 2018, within an hour of being notified of the setting of the hearing, I notified you and Ms. Gaines of my unavailability due to my previously scheduled leave. Mr. and Ms. Gaines declined to agree to the continuance. You indicated that my request for a continuance will be considered on the hearing date by the Board. Please note that I will not be present. Please also note my objection to the hearing being conducted in my absence as this unfairly prejudices the City of Norfolk and prevents the City from responding to arguments or allegations brought forth by Mr. and Ms. Gaines at the hearing, many of which will likely not be relevant to the appeal.

I have previously submitted documents and a copy of the Local Board of Building Code Appeals hearing transcript for inclusion in the record.

Based on the record submitted, I briefly note the following:

1. Joshua Gaines, the owner of 2410 West Avenue, Norfolk, Virginia, was sent a Notice of Violation on February 7, 2017 for a violation of Virginia Maintenance Code (VMC) Section 603.1 relating to an inoperable heating system and was told by the City to repair or replace the HVAC system or the property would be placarded for lack of a working heating system.
2. Joshua Gaines admits no appeal was filed relating to this violation notice so the fact that there is a violation relating to the heating system is a thing decided.
3. The property is rental property and was occupied by a tenant and her family.
4. The heating system was “mangled” and in “shambles” and had “serious neglect,” according to a report by a contractor hired by Joshua Gaines.
5. The heating system was not repaired or replaced by Joshua Gaines in the required compliance period.
6. The rental structure was placarded as unsafe or unfit for human occupancy because it lacked a working heating system. The tenant and her family vacated the premises.
7. Joshua Gaines informed the City that the mangled and inoperable heating system would be removed and he would not install another heating system.
8. The placarding of the property was appropriate because Joshua Gaines failed to comply with the notice to repair or replace the heating system in the time specified. A “structure unfit for human occupancy”, is one which “lacks... heating facilities...” (See, VMC Section 202 – definitions). Section 105.1 of the VMC provides that “[a]ll conditions causing such structures to be classified as... unfit for human occupancy shall be remedied or... the structure may be vacated and secured against public entry....”

9. Joshua Gaines has no intention of fixing, replacing or installing a heating system in this rental property. He intends to move another tenant into the unit without a heating system if the placard is removed prior to full correction of the admitted code violation.

10. The Local Board of Building Code Appeals did not err in its findings and its decision should be upheld. Joshua Gaines admitted that he was in violation of VMC Section 603.1, he failed to correct the violation, the violation makes the structure "unfit for human occupancy" as defined, and an order to vacate and placarding is authorized by the VMC for this violation.

For the foregoing reasons, the decision of the Local Board of Building Code Appeals should be upheld and this present appeal should be denied.

Very truly yours,



Cynthia B. Hall
Deputy City Attorney

CBH:sb

cc: Mr. & Mrs. Joshua Gaines (**via email delivery**)
Sherry Johnson, Division Head, Neighborhood Quality (**via email delivery**)

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REQUEST FOR INTERPRETATION

TO: OFFICE OF THE STATE BUILDING CODE TECHNICAL REVIEW BOARD
VIRGINIA DEPT. OF HOUSING AND COMMUNITY DEVELOPMENT
Main Street Centre
600 E. Main Street, Suite 300
Richmond, Virginia 23219-1321
Tel: (804) 371-7150 Fax: (804) 371-7092
Email: sbco@dhcd.virginia.gov

From: William Charles Yeager

Phone Number : 540-312-6495

Email Address: yeagerwc@montgomerycountyva.gov

Applicable Code: Part 1 of the Virginia Construction Code 2012 Edition

Code Section(s): 102.3 Exemptions (6) Farm Buildings and Structures. & Chapter 2 Definitions

Submitted by (signature):  Date: June 6, 2018

QUESTION(S):

Clarification requested from Chapter 2, Definitions regarding Farm Building and Structure, Where a building not used for residential purposes, located on a property where farming operations take place, and used primarily for any of the following uses or combination thereof: (1) Storage, handling, production, display, sampling, or sale of agricultural, horticultural, floricultural, or sivicultural products produced on the farm.

I have a farm licensed as a Limited Farm Brewery in compliance with Title 4.1 Alcoholic Beverage Control Act of the Code of Virginia. The hours of operation are Thursday through Sunday for about 35 - 36 hours weekly. Beer sampling is done in a structure where entertainment is provided as an Agritourism Activity in accordance to Title 3.2, Chapter 64 section §3.2-6400 of the Code of Virginia.

I am seeking a clarification of the intent of the USBC. Would the structure with its current use relative to the Limited Farm Brewery be exempt from regulation of the USBC? The brewing process includes products grown on the farm. Does a brewery constitute production of farm products grown on the farm?

Would selling of the brewery product by the glass constitute sampling of products produced on the farm?

Is the scenario listed in this interpretation request consistent with the spirit and intent of the USBC?

Is agritourism as defined in §3.2-6400 of the Code of Virginia recognized as a farming operation in accordance to the USBC?

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105.2.1 Qualifications of technical assistants. A technical assistant shall have at least three years of experience and general knowledge in at least one of the following areas: building construction; building, fire or housing inspections; plumbing, electrical or mechanical trades; or fire protection, elevator or property maintenance work. Any combination of education and experience that would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The locality may establish additional qualification requirements.

105.2.2 Certification of technical assistants. A technical assistant shall be certified in the appropriate subject area within 18 months after becoming a technical assistant. When required by local policy to have two or more certifications, a technical assistant shall obtain the additional certifications within three years from the date of such requirement.

Exception: A technical assistant in place prior to March 1, 1988, shall not be required to meet the certification requirements in this section while continuing to serve in the same capacity in the same locality.

105.2.3 Requirements for periodic maintenance and continuing education. Technical assistants shall attend periodic maintenance training as designated by DHCD. In addition to the periodic maintenance training required above, technical assistants shall attend 16 hours of continuing education every two years as approved by DHCD. If a technical assistant possesses more than one BHCD certificate, the 16 hours shall satisfy the continuing education requirement for all BHCD certificates.

105.3 Conflict of interest. The standards of conduct for building officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 31 (Section 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

105.4 Records. The local building department shall retain a record of applications received, permits, certificates, notices and orders issued, fees collected and reports of inspection in accordance with The Library of Virginia's General Schedule Number Six.

**SECTION 106
POWERS AND DUTIES OF THE BUILDING
OFFICIAL**

106.1 Powers and duties, generally. The building official shall enforce this code as set out herein and as interpreted by the State Review Board.

106.2 Delegation of authority. The building official may delegate powers and duties except where such authority is limited by the local government. However, such limitations of authority by the local government are not applicable to the third-party inspector policy required by Section 113.7.1 nor shall such limitations of authority by the local government have the effect of altering the provisions of this code or creating building regulations. When such delegations are made, the building official shall be responsible for assuring that they are carried out in accordance with the provisions of this code.

106.3 Issuance of modifications. Upon written application by an owner or an owner's agent, the building official may approve a modification of any provision of the USBC provided the spirit and functional intent of the code are observed and public health, welfare and safety are assured. The decision of the building official concerning a modification shall be made in writing and the application for a modification and the decision of the building official concerning such modification shall be retained in the permanent records of the local building department.

Note: The USBC references nationally recognized model codes and standards. Future amendments to such codes and standards are not automatically included in the USBC; however the building official should give them due consideration in deciding whether to approve a modification.

106.3.1 Substantiation of modification. The building official may require or may consider a statement from an RDP or other person competent in the subject area of the application as to the equivalency of the proposed modification. In addition, the building official may require the application to include construction documents sealed by an RDP.

106.3.2 Use of performance code. Compliance with the provisions of a nationally recognized performance code when approved as a modification shall be considered to constitute compliance with this code. All documents submitted as part of such consideration shall be retained in the permanent records of the local building department.

**SECTION 107
FEES**

107.1 Authority for charging fees. In accordance with Section 36-105 of the Code of Virginia, fees may be levied by the local governing body in order to defray the cost of enforcement of the USBC.

107.1.1 Fee schedule. The local governing body shall establish a fee schedule incorporating unit rates, which may be based on square footage, cubic footage, estimated cost of construction or other appropriate criteria.

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Luter, William <travis.luter@dhcd.virginia.gov>

Fwd: INTERPRETATION

DHCD-SBCO, rr <sbco@dhcd.virginia.gov>
 To: William Luter <travis.luter@dhcd.virginia.gov>

Mon, Jun 4, 2018 at 1:00 PM

FYI from sbco box

----- Forwarded message -----

From: **William C. Yeager** <yeagerwc@montgomerycountyva.gov>

Date: Mon, Jun 4, 2018 at 9:05 AM

Subject: INTERPRETATION

To: "sbco@dhcd.virginia.gov" <sbco@dhcd.virginia.gov>

The information content shown in blue script was given to me by Clark D. Mitchell, CFO, Deputy State Fire Marshal from the Virginia Department of Fire Programs of the State Fire Marshal's Office – Division 4, Chilhowie Virginia. The property located at **3050 Riner Road** in Montgomery County Virginia is a Farm. In accordance with section 27-98 of the Code of Virginia, Montgomery County is a jurisdiction where enabling legislation to enforce the SFPC has not been provided by the local government where the provisions of enforcement of the SFPC are of the State Fire Marshal's Office in accordance to section 104. Of the Virginia SFPC 2012 edition.

The question that needs a interpretation.

This is a Farm Brewery where they use this building to sample/consume the beer. Are Farm brewery's exempt through section 102.3 (6) of the VUSBC 2012 edition? Based on the information I have found, the use of this building for an area to sample the beer exceeds the limitations of section 102.3 (6) of the VUSBC 2012 edition, and by definition set forth in Chapter 2 for Farm Buildings and Structures of the VUSBC 2012 Edition. This place is open to the public five days a week. Farm use is not the primary function of this structure, therefore the building needs to be in compliance for the appropriate use in accordance to the VUSBC 2012 Edition. The Building Official interprets this structure as a NON-EXEMPT. Other Facts-

- Some, not all of the grains used to manufacture the beer are grown on the farm.
- The beer is brewed offsite and transported to the farm where it is served.
- "Farm Brewery" is not a term deemed part of a farming operation by definition in the VUSBC 2012 edition.

Link shows video of average concert, an average size crowd most every night while open to the public (Wednesday thru Sunday), crowd dancing in narrow space all across front of raised stage, I count six gas heater trees around edge of and throughout crowd (they are hard to see) , I count six gas fire pits throughout crowd in middle of room (look for very large open flames mixed within the crowd), Christmas lighting wrap throughout roof trusses, and two very large white curtains over side sliding outside exit door from stage facing crowd - right side of video. Brew taps are half way down right wall. Food service with Sterno pots is usually on floor level between front dual staircases that you can see staircase in back center of video:

<https://www.youtube.com/watch?v=WO1Sc5LEDSO>

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I conclude this structure is not eligible for exempt status under section 102.3 (6) of the VUSBC 2012 Edition, and relative guidelines of those exemptions in Chapter 2 DEFINITIONS of the VUSBC 2012 edition. I feel this building fits the definition of Night Club as defined in Chapter 2 of the VUSBC. Can you provide guidance on my interpretation of this building.

Thank you!

Sincerely,

Bill Yeager

Certified Building Official

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