

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, July 16, 2021 - 10:00am
Henrico County Tuckahoe Area Library
1901 Starling Drive Henrico, Virginia 23229

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

- II. Approval of May 21, 2021 Minutes **(TAB 2)**

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

In Re: Monica and Michael Davis
Appeal No 21-02

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

In Re: Anthony T. Grant, Jr.
Appeal No 21-03

- V. Public Comment

- VI. Secretary's Report
 - a. September 2021 meeting update

STATE BUILDING CODE TECHNICAL REVIEW BOARD

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

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

Vince Butler
(Virginia Home Builders Association)

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

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

David V. Hutchins
(Electrical Contractor)

Christina Jackson
(Commonwealth at large)

Joseph A. Kessler, III
(Associated General Contractors)

Eric Mays
(Virginia Building and Code Officials Association)

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

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

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

Aaron Zdinak, PE
(Virginia Society of Professional Engineers)

Vacant
(Commonwealth at large)

1 **STATE BUILDING CODE TECHNICAL REVIEW BOARD**
2 **MEETING MINUTES**
3 **May 21, 2021**
4 **Virtual Meeting**

5 <https://vadhcd.adobeconnect.com/lbbca/>
6

Members Present

Members Absent

Mr. James R. Dawson, Chairman
Mr. W. Shaun Pharr, Esq., Vice-Chairman
Mr. Vince Butler
Mr. Alan D. Givens
Mr. David V. Hutchins
Ms. Christina Jackson
Mr. Joseph Kessler
Mr. Eric Mays, PE
Mr. J. Kenneth Payne, Jr., AIA
Mr. Richard C. Witt
Mr. Aaron Zdinak, PE

Mr. Daniel Crigler
Ms. Joanne Monday

7 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 Secretary Travis Luter.

11 Roll Call

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

15 Approval of Minutes

The draft minutes of the March 19, 2021 meeting in the Review Board members’ agenda package were considered. Mr. Payne moved to approve the minutes as presented. The motion was seconded by Ms. Jackson and passed unanimously.

The draft minutes of the April 16, 2021 meeting in the Review Board members’ agenda package were considered. Mr. Payne moved to approve the minutes as presented. The motion was seconded by Ms. Jackson and passed with Messrs. Butler, Givens, Hutchins, and Witt abstaining.

26 Final Order

Appeal of Fairfax County: Appeal No. 21-01:

After review and consideration of the final order presented in the Review Board members’ agenda package, Mr. Payne moved to approve the final order as presented. The motion was seconded by Mr. Witt and passed unanimously.

State Building Code Technical Review Board
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33 Public Comment Chair Dawson opened the meeting for public comment. Mr. Luter
34 advised that no one had contacted him to speak. With no one requesting
35 to speak, requesting to be acknowledged to speak by use of the raised
36 hand feature of the Adobe Connect meeting platform, or requesting to
37 speak in the chat box section of the Adobe Connect meeting platform,
38 Chair Dawson closed the public comment period.

39
40 New Business Monica and Michael Davis; Appeal No. 21-02:

41
42 A hearing convened with Chair Dawson serving as the presiding
43 officer. The hearing was related to the home located at 1002 Round
44 Hill School Road in Augusta County.

45
46 The following persons were sworn in and given an opportunity to
47 present testimony:

48
49 Monica Davis, Property Owner
50 Michael Davis, Property Owner
51 G. W. Wiseman, Augusta County Building Official

52
53 After testimony concluded, Chair Dawson closed the hearing and stated
54 a decision from the Review Board members would be forthcoming and
55 the deliberations would be conducted in open session. It was further
56 noted that a final order reflecting the decision would be considered at a
57 subsequent meeting and, when approved, would be distributed to the
58 parties, and would contain a statement of further right of appeal.

59
60 Decision: Monica and Michael Davis; Appeal No. 21-02:

61
62 Motion #1

63 After deliberations, Mr. Mays moved to uphold the local building
64 official and local appeals board acceptance of the Schnitzhofer
65 Structural Engineers report dated November 3, 2020 as a valid
66 engineers report. The motion was seconded by Mr. Witt.

67
68 After further deliberations, Mr. Payne moved to substitute for the
69 pending motion the following: To uphold the local building official and
70 local appeals board to accept the Schnitzhofer Structural Engineers
71 report dated November 3, 2020 as a valid engineers report with the
72 exemption of items #8 and #12 in the letter from the local building
73 official dated July 16, 2020. Mr. Payne further moved to overturn the
74 local building official and local appeals board acceptance of the
75 Schnitzhofer Structural Engineers report dated November 3, 2020 as a
76 valid engineers report for items #8 and #12 in the letter from the local
77 building official dated July 16, 2020. The substitute was seconded by
78 Mr. Mays.

79

80 After additional deliberation, the substitute was withdrawn. The
81 original motion by Mr. Mays was also withdrawn
82

83 Motion #2

84 After further deliberations, Mr. Kessler moved to uphold the local
85 building official and local appeals board acceptance of the Schnitzhofer
86 Structural Engineers report dated November 3, 2020 as a valid
87 engineers report for the letter from the local building official dated July
88 16, 2020. Mr. Kessler further moved that the report did not resolve any
89 issues identified in the letter from the local building official dated July
90 16, 2020. Mr. Kessler further moved that the Engineering Solutions
91 report was also a valid report for the letter from the local building
92 official dated July 16, 2020. The motion was seconded by Mr. Payne
93 and passed unanimously.
94

95 Anthony T. Grant, Jr.; Appeal No. 21-03:

96
97 A hearing convened with Chair Dawson serving as the presiding
98 officer. The hearing was related to the home located at 4281 Cole
99 Avenue in the City of Suffolk.

100
101 The following persons were sworn in and given an opportunity to
102 present testimony:
103

104 Anthony T. Grant, Jr., Property Owner
105 Ashley Grant, Property Owner
106 Michael Robinson, City of Suffolk Building Official
107 Jeffery Sadler, Witness for the City of Suffolk
108 Carl Stevens, Witness for the City of Suffolk
109

110 Also present was:

111
112 Sean Dolan, legal counsel for the City of Suffolk
113

114 After testimony concluded, Chair Dawson closed the hearing and stated
115 a decision from the Review Board members would be forthcoming and
116 the deliberations would be conducted in open session. It was further
117 noted that a final order reflecting the decision would be considered at a
118 subsequent meeting and, when approved, would be distributed to the
119 parties, and would contain a statement of further right of appeal.
120

121 Decision: Anthony T. Grant, Jr.; Appeal No. 21-03:

122
123 Item #1

124 After deliberations, Mr. Mays moved that the City of Suffolk local
125 appeals board did not comply with the Remand Order dated January

State Building Code Technical Review Board
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126 11, 2019. The motion was seconded by Mr. Kessler and passed
127 unanimously.

128
129 Item #2
130 After further deliberations, Mr. Givens moved that the city of Suffolk
131 building official is to provide complete manual J, and D calculations
132 based on the original plans with corrected orientation, and adjustments
133 made for missing and new windows applied to them. The city of
134 Suffolk building official is also to provide all the backup
135 documentation including but not limited to wall construction type,
136 glazing and door details, insulation validating the data contained in the
137 new Manual J and D calculations of the home not on the as built as this
138 could require destructive testing. Once the accurate manual J and D
139 calculations are completed, then see, in particular, if the system meets
140 these requirements by testing air flow to each room, and if the BTU
141 values of the current system meets the requirements of the structure.
142 The city of Suffolk building official should also issue NOV's for the
143 other issues contributing to the comfort issues that were identified such
144 as but not limited to sealing registers, and vapor barrier issues in the
145 crawl space. The city of Suffolk building official shall also provide all
146 of the supporting documents and completed manual J and D
147 calculations to the State Technical Code Review Board. The motion
148 was seconded by Mr. Pharr and passed with Messrs. Butler and
149 Hutchins and Ms. Jackson voting in opposition.

150
151 Secretary's Report Mr. Luter informed the Board of the current caseload for the upcoming
152 meeting scheduled for July 16, 2021.

153
154 Attorney Bell provided legal updates to the Board.

155
156 Adjournment There being no further business, the meeting was adjourned by proper
157 motion at approximately 5:00 p.m.

158
159 Approved: July 16, 2021

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Chairman, State Building Code Technical Review Board

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Secretary, State Building Code Technical Review Board
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1 VIRGINIA:
2

3 BEFORE THE
4 STATE BUILDING CODE TECHNICAL REVIEW BOARD
5

6 IN RE: Appeal of Monica and Michael Davis
7 Appeal No. 21-02
8

9 DECISION OF THE REVIEW BOARD
10

11 I. Procedural Background
12

13 The State Building Code Technical Review Board (Review Board) is a Governor-
14 appointed board established to rule on disputes arising from application of regulations of the
15 Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of
16 Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process
17 Act (§ 2.2-4000 et seq. of the Code of Virginia).
18

19 II. Case History

20 On March 27, 2020, the County of Augusta Department of Community Development
21 (County Building Official), the agency responsible for the enforcement of Part 1 of the 2012
22 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), issued the
23 Certificate of Occupancy to Monica and Michael Davis (Davis), for a single-family dwelling
24 located at 1002 Round Hill School Road, in Augusta County.

25 Shortly after moving into their new home, Davis contacted the County Building Official
26 requesting he come inspect a variety of issues and concerns they had with their home, attached
27 garage, and detached garage.

28 In June and July of 2020, the County Building Official visited the Davis property several
29 times investigating the issues brought forth by Davis. During one or more of these inspections,
the County Building Official found several violations. On July 16, 2020, the County Building

30 Official issued a letter to Hendricks and Son General Contractor, LLC citing seventeen (17) code
31 violations.

32 In September of 2020, Schnitzhofer Structural Engineers visited the Davis home to
33 evaluate the residence with attached garage and detached garage related to the cited violations in
34 the July 16, 2020 letter from the County Building Official. Schnitzhofer Structural Engineers
35 drafted a letter dated November 3, 2020, which was received by Augusta County on November 9,
36 2020. The Schnitzhofer Structural Engineers letter was reviewed and accepted by the County
37 Building Official.

38 Davis filed a timely appeal to the Augusta County Board of Building Code Appeals (local
39 appeals board) for the acceptance and approval of the Schnitzhofer Structural Engineers letter.
40 Davis further appealed to the local appeals board to consider the proposal report from Engineer
41 Solutions and require the builder to approach the cited violations with the suggested analysis
42 process set forth in that report. The local appeals board upheld the decisions of the County
43 Building Official finding that the Schnitzhofer Structural Engineers report was a valid engineering
44 report for the Davis' structure. On February 1, 2021, Davis further appealed to the Review Board.

45 A virtual Review Board hearing was held May 21, 2021. Appearing at the Review Board
46 hearing for Augusta County was G. W. Wiseman. Monica and Michael Davis attended the hearing
47 on their behalf.

48 III. Findings of the Review Board

49 A. Whether to uphold the decision of the County Building Official and the local appeals
50 board that the Schnitzhofer Structural Engineers report is a valid report for the Davis
51 structure.

52 Davis argued that Schnitzhofer Structural Engineers were unable to provide an accurate
53 report as many of the violations cited in the letter from the County Building Official dated July

54 16, 2020. were in locations that were covered with drywall. Davis further argued that because
55 the drywall was not removed, the cited violations had not been properly investigated; therefore,
56 the report could not satisfy the issues as indicated in the County Building Official’s letter dated
57 March 31, 2021. Davis further argued that without proper investigation the report could not
58 provide the required engineer evaluation and design necessary for the repairs pursuant to the
59 letter from the building official dated July 16, 2020. Davis also argued that the Engineer
60 Solutions report provided a “clear-cut flawless” report as it was performed in conjunction with
61 the removal of drywall for proper investigation, and provided the design for repair as required in
62 the letter from the County Building Official dated July 16, 2020. Davis argued each individual
63 violation cited in the letter from the County Building Official dated July 16, 2020.

64 The County argued that the Schnitzhofer Structural Engineers report was a valid report
65 for the letter from the County Building Official dated July 16, 2020. The County further argued
66 that the Schnitzhofer Structural Engineers report fully resolved items #8 and #12 of the letter
67 from the building official dated July 16, 2020. The County argued that the remaining items
68 from the letter from the County Building Official dated July 16, 2020 could be resolved if the
69 repairs were done in accordance with the instructions in the Schnitzhofer Structural Engineers
70 report which the building official approved by approval of the report.

71 The Review Board agrees with the County and local appeals board that the Schnitzhofer
72 Structural Engineers report is a valid report, but does not resolve any of the issues outlined in the
73 July 16, 2020 letter from the County Building Official. The Review Board further finds that the
74 Engineering Solutions report is also a valid report.

75 IV. Final Order

76 The appeal having been given due regard, and for the reasons set out herein, the Review
77 Board orders as follows:

78 A. Whether to uphold the decision of the County Building Official and the local appeals
79 board that the Schnitzhofer Structural Engineers report is a valid report for the Davis
80 structure.

81 The decision by the County Building Official and local appeals board that the Schnitzhofer
82 Structural Engineers report is a valid report is upheld noting that the Engineering Solutions report,
83 provided by the Davis', is also a valid report.

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Chair, State Building Code Technical Review Board

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91 Date entered _____ July 16, 2021 _____

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96 As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days
97 from the date of service (the date you actually received this decision or the date it was mailed to
98 you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal
99 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.

1 VIRGINIA:
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3 BEFORE THE
4 STATE BUILDING CODE TECHNICAL REVIEW BOARD
5

6 IN RE: Appeal of Anthony T. Grant, Jr.
7 Appeal No. 21-03
8

9 DECISION OF THE REVIEW BOARD
10

11 I. Procedural Background
12

13 The State Building Code Technical Review Board (Review Board) is a Governor-
14 appointed board established to rule on disputes arising from application of regulations of the
15 Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of
16 Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process
17 Act (§ 2.2-4000 et seq. of the Code of Virginia).
18

19 II. Case History

20 In May of 2015, the City of Suffolk Planning and Community Development Office (City
21 building official), the agency responsible for the enforcement of Part 1 of the 2009 Virginia
22 Uniform Statewide Building Code (Virginia Construction Code or VCC), issued a final inspection
23 and a subsequent Certificate of Occupancy for a single-family dwelling at 4281 Cole Avenue in
24 the City of Suffolk which was purchased by Ashley and Anthony T. Grant Jr. (Grant) in June of
25 2015¹.

26 Due to the lack of action by the City appeals board, on July 27, 2020 Grant, through his
27 attorney, filed a Show Cause Order or Enforcement of Decision of the State Building Code
28 Technical Review Board against the City appeals board, in the City of Suffolk Circuit Court. In
January of 2021, the City appeals board again ruled to uphold the decision of the City building

¹ This case is not the first time the Review Board has seen these parties. Please see Review Board Appeal Case 18-10 which is attached as a supplement.

29 official that the heating and cooling system was sized properly. Grant further appealed to the
30 Review Board stating that the City appeals board had not complied with the Review Board Remand
31 Order dated January 11, 2019.

32 A virtual Review Board hearing was held May 21, 2021. Appearing at the Review Board
33 hearing for the City of Suffolk were Michael Robinson, Jeff Sadler, Carl Stevens, and Sean Dolan,
34 legal counsel for the city. Anthony and Ashley Grant attended the hearing on their behalf.

35 III. Findings of the Review Board

36 A. Whether the City appeals board complied with the Remand Order dated January 11, 2019

37 Grant argued the City appeals board did not comply with the Remand Order dated
38 January 11, 2019, to provide the Manual S, J, and D calculations and other requisite information
39 within 60 days. Grant further argued that he made many attempts via telephone calls and emails
40 to discuss the matter with the City building official. Grant also argued that only after the filing
41 of the Show Case Order, did the City building official respond. Grant further argued that the
42 HVAC contractor, utilized by the City building official to conduct the required testing on his
43 home, did not properly evaluate his home.

44 The City, through legal counsel, argued that following the recommendation of the
45 Review Board, the City retained a third party contractor to evaluate the sizing of the HVAC
46 system in its as built condition to provide the City appeals board additional information to be
47 used to evaluate the HVAC system. The City further argued that all of the information the City
48 acquired from the third party contractor indicated the HVAC was properly sized.

49 The Review Board agrees with Grant that the City appeals board did not comply with the
50 Remand Order dated January 11, 2019. The Review Board further finds that there is still
51 insufficient information present to make an informed decision and remands the appeal back to the

52 City building official to provide specific information and documentation for a better evaluation of
53 the HVAC system.

54 IV. Final Order

55 The appeal having been given due regard, and for the reasons set out herein, the Review
56 Board orders as follows:

57 A. Whether the City appeals board complied with the Remand Order dated January 11, 2019

58 The City appeals board did not comply with the Remand Order dated January 11, 2019 and
59 that the decision by the City building official and City appeals board that HVAC system is sized
60 properly remains overturned.

61

62 Remand Order

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64 The appeal having been given due regard, and for the reasons set out herein, the Review
65 Board orders this matter to be, and hereby is, remanded to the City building official to provide
66 complete manual J, and D calculations based on the original plans with corrected orientation, and
67 adjustments made for missing and new windows applied to them. The City building official is also
68 to provide all the backup documentation including, but not limited to, wall construction type,
69 glazing and door details, insulation validating the data contained in the new Manual J and D
70 calculations of the home not on the as built as this could require destructive testing. Once the
71 accurate manual J and D calculations are completed, then see, in particular, if the system meets
72 these requirements by testing air flow to each room, and if the BTU values of the current system
73 meets the requirements of the structure. The City building official should also issue NOV's for the
74 other issues contributing to the comfort issues that were identified such as but not limited to sealing
75 registers, and vapor barrier issues in the crawl space. The City building official shall also provide

76 all of the supporting documents and completed manual J and D calculations to the State Technical
77 Code Review Board.

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Chair, State Building Code Technical Review Board

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85 Date entered _____ July 16, 2021 _____

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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.