AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, January 19, 2018

Virginia Housing Center
4224 Cox Road, Glen Allen, Virginia

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

II. Election of Officers – Secretary **(TAB 2)**

III. Approval of November 17, 2017 Minutes (**TAB 3)**

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

In Re: Appeal of Deborah and Benny Bono
Appeal No 17-6

V. Public Comment

VI. Preliminary Hearing **(TAB 5)**

In Re: Appeal of Joshua and Makiba Gaines
Appeal No. 17-11

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

In Re: Appeal of Harvey Dupree (A...H Variety)
Appeal No. 17-10

VIII. Secretary's Report

STATE BUILDING CODE TECHNICAL REVIEW BOARD

James R. Dawson – Vice Chairman
(Virginia Fire Chiefs Association)

W. Keith Brower, Jr.
(Commonwealth at large)

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)

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

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

Aaron Zdinak, PE
(Virginia Society of Professional Engineers)

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

Members Present	Members Absent
Mr. J. Robert Allen, Chairman	Mr. Matthew Arnold
Mr. James R. Dawson, Vice Chairman	Mr. Vince Butler
Mr. W. Keith Brower	Mr. Alan D. Givens
Mr. Daniel Crigler	Mr. Eric Mays, PE
Mr. Joseph Kessler	Ms. Patricia S. O'Bannon
Mr. E. G. Middleton, III	Mr. Aaron Zdinak, PE
Ms. Joanne Monday	
Mr. W. Shaun Pharr, Esq.	

Call to Order

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

Roll Call

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

Election of Secretary

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

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

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

Approval of Minutes

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

STATE BUILDING CODE TECHNICAL REVIEW BOARD
MEETING MINUTES
November 17, 2017
Glen Allen, Virginia

Members Present	Members Absent
Mr. J. Robert Allen, Chairman	Mr. Matthew Arnold
Mr. James R. Dawson, Vice Chairman	Mr. Vince Butler
Mr. W. Keith Brower	Mr. E. G. Middleton, III
Mr. Daniel Crigler	
Mr. Alan D. Givens	
Mr. Joseph Kessler	
Mr. Eric Mays, PE	
Ms. Joanne Monday	
Ms. Patricia S. O'Bannon	
Mr. W. Shaun Pharr, Esq.	
Mr. Aaron Zdinak, PE	

Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order by the Chairman at approximately 10:00 a.m.

Roll Call

The attendance was established by the Acting Secretary, Mr. Vernon W. Hodge, with a quorum being present. Mr. Justin I. Bell, the board's legal counsel from the Attorney General's Office, was also present.

Approval of Minutes

After consideration, Ms. O'Bannon moved to approve the September 15, 2017 draft minutes as presented in the Review Board members' agenda package with an editorial correction to replace the word "if" with the word "of" in the third line of the next to last paragraph on page two of the minutes. The motion was seconded by Mr. Crigler and passed unanimously with Messrs. Kessler and Pharr abstaining from the vote.

Final Order

Appeal of John Kania Mitchell Vogel and Karen Anne Mitchell-Smith; Appeal No. 17-7:

Mr. Hodge pointed out two editorial errors in the draft final order missed by staff; a dash needed to be added to the Virginia Administrative Code section number in the first paragraph of the "Background" section of the order and a period needed to be added to the end of the second paragraph of the "Findings" section of the order.

After consideration, Ms. Monday moved to approve the final order as presented in the Review Board members' agenda package with

editorial corrections pointed out by staff and the replacement of the word "repelling" with the word "rappelling" in the fourth line of the second paragraph of the "Background" section of the order. The motion was seconded by Ms. O'Bannon and passed unanimously with Messrs. Kessler and Pharr abstaining from the vote.

Old Business

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

Mr. Hodge advised the Review Board members that the scheduled deliberation of the appeal was unnecessary since the appeal had been withdrawn by the County. Mr. Hodge read the relevant excerpt of the email from the County withdrawing the appeal and noted that while there was some confusion on the County's part concerning the status of the appeal, the repairs had been approved by the County and due to the County's withdrawal of the appeal, the matter would be placed among the ended causes of the Review Board.

Public Comment

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

New Business

Appeal of Deborah Caldwell-Bono and Benny Bono; Appeal No. 17-6:

A hearing convened with the Chairman serving as the presiding officer. The appeal involved a determination by the building official of the County of Roanoke relative to the use of a building on Triple J Farm, located at 5198 Blacksburg Road. The Bonos own property on which they live adjacent to the farm, and own an equestrian center across the road from the farm.

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

Deborah and Benny Bono
Morgan Yates; Roanoke County building official
Kimberly and Courtney Bolden and Rebecca James; Triple J Farm

Also present were:

Terry Grimes, Esq.; counsel for the Bonos
Brittany Haddox, Esq.; co-counsel for the Bonos
Peter Lubeck, Esq.; counsel for Roanoke County

There was consideration of a late submittal by the Bonos. After

discussion, Mr. Pharr moved to accept the submittal. The motion was seconded by Ms. Monday and passed unanimously.

Testimony was presented concerning whether the County was barred from raising issues of jurisdiction. After testimony concluded, Mr. Pharr moved to accept jurisdiction of the appeal. The motion was seconded by Mr. Brower. After further discussion, Mr. Crigler made a substitute motion that consideration of the timeliness of the appeal and whether the Bonos were an aggrieved party were issues properly before the board. The substitute motion was seconded by Mr. Mays and the motion passed with Mr. Dawson voting in opposition.

Testimony was then presented concerning whether the Bonos had standing to appeal due to being aggrieved by the decision of the building official that the building in question was a farm building and exempt from the Virginia Uniform Statewide Building Code.

After testimony concluded, the Chairman closed the hearing for consideration of the preliminary issue of the properness of the appeal based on whether the Bonos were aggrieved.

Decision: Appeal of Deborah Caldwell-Bono and Benny Bono; Appeal No. 17-6:

After deliberation of the issue of properness of the appeal, Mr. Mays moved that the Bonos were aggrieved by the decision of the building official and therefore had a right of appeal. The motion was seconded by Ms. Monday and a vote was taken. The motion failed with a vote of five yeas and six nays. Mr. Dawson then moved to overturn the decision of the County of Roanoke Building Code Board of Adjustments and Appeals and dismiss the Bono's appeal as improper due to the Bonos not being an aggrieved party. The motion was seconded by Mr. Crigler and a vote was taken. The motion passed with a vote of six yeas and five nays. Mr. Mays expressed his concerns with the decision.

Secretary's Report

Mr. Bell gave the Review Board members an overview of the status of appeals which had been further appealed to court.

A plaque was presented to Chairman Allen by DHCD staff to commemorate his service as a Review Board member and as chairman of the board. Review Board members acknowledged his service and that he would be missed.

Mr. Hodge discussed several housekeeping issues and informed the

Review Board members of the resignation of Review Board member Matt Arnold for health reasons. Staff will send a certificate of recognition to Mr. Arnold.

Adjournment — There being no further business, Mr. Dawson moved to adjourn the meeting at approximately 12:30 p.m.

Approved: January 19, 2018

_____
Vice-Chairman, State Building Code Technical Review Board

_____
Acting Secretary, State Building Code Technical Review Board

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Deborah Caldwell-Bono and Benny Bono
Appeal No. 17-6

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

Deborah Caldwell-Bono and Benny Bono (Bonos) appeal to the Review Board from a decision of the County of Roanoke Building Code Board of Adjustments and Appeals (County appeals board), which upheld a determination of the County of Roanoke building commissioner that a building on property adjacent to property where the Bonos live and across a public road from an equestrian center operated by the Bonos was a farm building and not subject to the Virginia Uniform Statewide Building Code (state building code) due to a statutory exemption for farm buildings under the laws governing the state building code. The building in question is located at 5198 Blacksburg Road and owned by Kimberly Bolden and her mother. In addition to housing farm equipment and supplies, portions of the building are used for wedding events and were alleged by the Bonos to be used for a time as a residence by Ms. Bolden's son.

In the proceedings before the County appeals board, the building commissioner, through legal counsel, raised two jurisdictional issues; whether the Bonos had a right to appeal and whether they filed a timely appeal. The issue of the Bonos' right of appeal was questioned based on the statutory provision governing appeals under the state building code and requiring an appealing party to be aggrieved by the decision being appealed.

The County appeals board considered both jurisdictional issues and ruled that the Bonos were aggrieved and that the appeal was timely filed. In the appeal to the Review Board, the Bonos asserted that the building commissioner was barred from raising those jurisdictional issues since the building commissioner did not appeal the decision of the County appeals board to the Review Board.

A hearing was held before the Review Board with the Bonos and building commissioner and their respective legal counsel present. Ms. Bolden was present but did not participate in the proceedings.

The Review Board limited its proceedings to only consideration of whether the building commissioner was barred from raising the jurisdictional issues heard by the County appeals board and whether the Bonos were aggrieved as required by the statute governing appeals under the state building code.

Findings of the Review Board

Relative to the issue of the right of the building commissioner to raise jurisdictional issues in the appeal to the Review Board irrespective of whether the building commissioner further appealed the County appeal board's decision on those issues; proceedings before the Review Board are de novo (see § 36-115 of the Code of Virginia). The building commissioner

did not need to appeal the County appeal board's decision to preserve the right to raise the jurisdictional issues in the Bonos' appeal to the Review Board.

With respect to the issue of whether to dismiss the Bonos appeal due to their lack of standing as an aggrieved party, the Review Board finds that Virginia courts have provided guidance in determining whether a party is aggrieved. In Virginia Supreme Court cases, the court has held that to have standing, a person's rights have to be affected by the disposition of the case and that to be an aggrieved party, the party has direct interest in the subject matter and an immediate, pecuniary and substantial interest, and not a remote or indirect interest. In addition, the court has held that to be aggrieved, there is a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon a party different from that suffered by the public generally.

The Bonos' concerns are predominately related to noise and activity associated with the zoning approval obtained by Ms. Bolden from the County of Roanoke for wedding events. The Bonos have challenged the County's zoning approval in a separate action and the matter is pending in the courts. The decision of the building commissioner that the building is a farm building has no bearing on those issues; they may continue to the extent that the County's zoning approval stands irrespective of whether the building is exempt or subject to the state building code.

The remaining issue raised by the Bonos is a claim that the building in question is unsafe based on their engagement of an architect to contact the building commissioner with his concerns. While it is true that there are no standards for farm buildings due to the statutory exemption from the state building code, the issue of safety is more applicable to building

occupants than to the Bonos. Consequently, that issue does not make the Bonos aggrieved by the building commissioner's decision.

Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the County appeals board to be, and hereby is, vacated, and the Bonos' appeal to the Review Board to be, and hereby is, dismissed for lack of standing since the Bonos are not an aggrieved party as required by the statute governing appeals under the state building code.

_____
Vice-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 Vernon Hodge, Acting 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.

VIRGINIA:

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

IN RE: Appeal of Joshua and Makiba Gaines
Appeal No. 17-11

CONTENTS

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)
(For Preliminary Consideration as to Timeliness)

IN RE: Joshua and Makiba Gaines
Appeal No. 17-11

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. On February 7, 2017, the City of Norfolk Department of Neighborhood Development (NDND), in enforcement of Part III of the Virginia Uniform Statewide Building Code (USBC), Maintenance, 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. NDND 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 USBC department under Part I of the USBC, Construction, on March 3, 2017, to install a gas space heater. An inspection was conducted by the City's USBC department for construction inspections on March 20, 2017 and the installation was disapproved due to the use of an unvented heater for the sole source of heat.

4. Mr. Gaines also received a copy of the placard on March 20, 2017 and believed he filed an appeal to the City of Norfolk Local Board of Appeals (local board) on March 20, 2017, although there is no record of an application form to the local board.

5. The City's 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 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 Gaines's, the City's building official, NDND representatives and the City's legal counsel. At the conference, the Gaines' acknowledged that no appeal right existed from the November 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 Gaines' 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. Review Board staff advised the parties that the merits of the appeal could not be heard unless the Review Board determined that the appeal to the local board was timely;

therefore, a preliminary hearing would be scheduled before the Review Board to decide on the timeliness issue. The parties were advised that this staff summary would be drafted and distributed and that opportunity would be given for the parties to submit objections, corrections or additions to the staff summary and additional documents or written arguments relative to the timeliness issue for the preliminary hearing before the Review Board.

Suggested Issue for Resolution by the Review Board

1. Whether to overturn the local board's decision that the Gaines' appeal was untimely.

COMBINED DOCUMENTS

[redacted] [redacted]

2410 West Avenue

02/03/17 – Complaint received through Call Center from tenant for no heat, leak, etc.

02/06/17 – Inspection of property. Tenant Ms. Niles.

02/07/17 – Report was written. Emailed copy to owner. The heat and electrical was given seven days to repair due to the nature of the violation. The other code violations had 30 days.

02/08/17 – Email received from owner saying heat was restored.

02/14/17 – Met with owners, Mr. & Mrs. Gaines. The tenant was not home but we inspected the HVAC unit on the exterior. I showed them that the gas was off at the valve to the HVAC system and that their HVAC contractor spoke about the poor condition of the unit. The was no heat to unit and nothing showing the electrical had been repaired.

02/15/17 – Placarded unit due to uninhabitable conditions. Confirmed tenant had a place to stay.

03/06/17 – Will postpone follow up inspection scheduled for 03/07/17 due to the Injunction Hearing on Friday, March 10, 2017.

NOTE: all mail was returned

Joshua Gaines
PO Box 2862
Virginia Beach, Va., 23452
757-389-6563

Property: 2410 West Ave.
Norfolk, Va. 23505

On Feb. 07, 2017, Inspector Joseph Johnson inspected the property at 2410 West Ave., Norfolk, Va. He cited the central HVAC unit with violations under 603.1 and 605.1 of the VMC. The inspector placarded the property on Feb. 14, 2017, but did not send the notice of placard to the homeowner. He has the homeowners' current PO Box address, physical address, and email address. The homeowner was unable to file the appeal for several reasons: 1) the City's employees were unfamiliar with the appeals process, and on several occasions, were unable to assist with the process; and 2) the appellant did not have a copy of the notice to attach to the appeal, as required until after the time expired.

The appellant removed the heating system completely on Mar. 6, 2017, and asked for a re-inspection. The City inspector inspected the unit on Mar. 20th, and saw that the heating unit, previously cited, was removed, but refused to issue a new notice of violation. The homeowner currently has no heating violation, but was told verbally on Mar. 20th that he must install a new heating system to have the property un-placarded; he appeals this decision. Also on Mar. 20th, he received a copy of the notice placard notice dated for the 14th, and was able to file the appeal. He filed the appeal on the same day. His appeals: 1) the City's refusal to issue a new notice of violation upon re-inspection on Mar. 20th; 2) an appeal of the City's maintaining the placard on the property after amelioration of the cited violation on Mar. 6; and 3) appeal of the notice of placard, dated for Feb. 14, but not received until Mar. 20th. All of these reasons were cited in the LBBCA appeal.

04/05/2017

THE CITY OF
NORFOLK
NEIGHBORHOOD DEVELOPMENT

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.

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

-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.

THE CITY OF
NORFOLK
NEIGHBORHOOD DEVELOPMENT

February 15, 2017 Recieved 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,

for

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

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

City of NORFOLK

Division of Building Safety
401 Monticello Ave, First Floor
Norfolk, VA 23510

March 20, 2017

Joshua and Makiba Gaines
7486 Hughart St.
Norfolk, VA 23505

Reference Property: 2410 West Avenue

Dear Joshua and Makiba,

The Request for Appeal you filed March 20, 2017 appealing the Property Maintenance Official's decision concerning 2410 West Avenue, Norfolk, VA. 23505 is hereby denied. The reason for denial is failure to submit within the required 14 days after receipt of Notice of Violation in accordance with the Virginia Uniform Statewide Building Code, Part III, Section 106.5.

An email was sent to you at makibam@aol.com which included a copy of the Property Maintenance Official's Notice of Violation dated February 7, 2017. Additionally, three letters were mailed "Return Service Requested" to you at P.O. Box 8393, Norfolk, VA 235030393. One each were returned undeliverable on 9/6/2016, 2/15/2017 and 2/23/2017.

Should you have any questions, please feel free to contact me at 757-664-6511.

Sincerely,

Richard S. Fortner, CBO
Division of Building Safety
Building Commissioner

Cc:
Cynthia Hall, Deputy City Attorney
Sherry Johnson, Division Head

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) 9480 Dugnart 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 [recieved 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 103.1 & 105.1; appeal refusal to reinspect; appeal denial of revocation 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: _____ 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.

Makiba_m@aol.com

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: alan.mcmahan@dhcd.virginia.gov

APPLICATION FOR ADMINISTRATATIVE 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):

Joshua Gaines, PO Box 2862, Virginia Beach, Va., 23452, 757-389-6563, makibam@aol.com

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

City of Norfolk, Sherry Johnson, Joseph Johnson, Cynthia Hall

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 4th day of April , 2017, 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: Joshua Gaines
(please print or type)

THE CITY OF NORFOLK

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

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

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

Application for appeal was not filed within the 14 calendar days of the receipt of the decision being appealed in accordance with the 2012 Virginia Maintenance Code, Section 106.5.

Hearing Date: June, 28, 2017

Signature _____
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: alan.mcmahan@dhcd.virginia.gov

APPLICATION FOR ADMINISTRATATIVE 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):

Joshua and Makiba Gaines

Opposing Party Information (name, address, telephone number and email address of all other parties): City of Norfolk, c/o Cynthia Hall, Norfolk City Attorney's Office, 810 Union Street, Suite 900, Norfolk, VA 23510

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 10/27/2017, 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: Joshua Gaines Makiba Gaines
(please print or type)

Makiba and Joshua Gaines
PO Box 2862
Virginia Beach, Va., 23452

STATEMENT OF RELIEF SOUGHT

To whom it may concern,

We are currently seeking relief from the City of Norfolk's misinterpretation and misapplication of the Virginia Uniform Statewide Building Code. Specifically, the City has placarded the property because it does not have a heating unit installed, purportedly under 603.1 and 605.1. First, because neither of these codes require a homeowner to install a heating unit, we request interpretation. 603.1 requires a person to provide heat to an occupant if the lease agreement governing the occupancy provides, and 605.1 requires that any mechanical structure installed must be operable and safe. Secondly, we request relief from the City's misinterpretation of the Code. We appeal from the denial of our hearing based on "untimely filing" of the appeal because we filed within the appropriate time from receipt, as provided by the code. The City has created barriers which impedes timely filing of appeals; if possible, we ask for an investigation into the City's practices and frequent misapplications of the Code. We ultimately are requesting removal of the placard from the structure because the structure is safe and in compliance with the Code.

Thanks,

Makiba and Joshua Gaines
10/27/2017

CC:

Cynthia Hall
Norfolk City Attorney's Office
810 Union Street
Suite 900
Norfolk, VA 23510

Makiba

From: Makiba <makibam@aol.com>
Sent: Tuesday, April 04, 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**
> <image002.jpg><image003.jpg><image004.jpg><image005.jpg>
>
> **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.**

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 code603.1 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

<image006.jpg>
Department of Neighborhood Development
401 Monticello Ave
Norfolk, VA 23509
757-664-6563 | 757-376-7117 mobile

Connect with us:
www.norfolk.gov
<image007.jpg><image008.jpg><image009.jpg><image010.jpg>

Makiba

From: Fortner, Richard <Richard.Fortner@norfolk.gov>
Sent: Tuesday, April 04, 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

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

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Sent: Tuesday, April 04, 2017 12:02 AM
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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.

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Sent from my iPhone

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> > **Sent:** Wednesday, March 29, 2017 11:19 AM
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> > **Subject:**
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> >
> > 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


Makiba

From: Makiba <makibam@aol.com>
Sent: Tuesday, April 04, 2017 12:02 AM
To: Hall, Cynthia
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Subject: Re: 2410 West Ave.

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Sent from my iPhone

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Sherry Johnson
Property Maintenance Official
Division Head for Neighborhood Quality

<image006.jpg>
Department of Neighborhood Development
401 Monticello Ave
Norfolk, VA 23509
757-664-6563 | 757-376-7117 mobile

Connect with us:
www.norfolk.gov
<image007.jpg><image008.jpg><image009.jpg><image010.jpg>

Makiba

From: Makiba <makibam@aol.com>
Sent: Monday, April 03, 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."

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Sherry Johnson
Property Maintenance Official
Division Head for Neighborhood Quality


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Norfolk, VA 23509
757-664-6563 | 757-376-7117 mobile

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Makiba

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 Virginal Maintenance code603.1 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.

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Sherry Johnson
Property Maintenance Official
Division Head for Neighborhood Quality

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

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www.norfolk.gov

Makiba

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

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

From: Homewood, George
Sent: Monday, March 27, 2017 1:15 PM
To: 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>; Fortner, Richard <Richard.Fortner@norfolk.gov>; Newcomb, Leonard <Leonard.Newcomb@norfolk.gov>
Subject: RE: Re-inspection 2410 West Ave

My understanding is that the issues (most recently a mechanical inspection for an unvented gas heater was failed on the 20th) you are having are being written under the Property Maintenance Code which is not within the Planning Department; property maintenance issues are addressed by the Department of Neighborhood Development of which Mr. James Rogers (copied above) is the Director.

George M. Homewood, FAICP CFM
Director

THE CITY OF NORFOLK
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-inspecton 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,

Makiba

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

George,

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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

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Department of City Planning,
Building Safety Division
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From: Homewood, George
Sent: Monday, March 27, 2017 1:15 PM
To: 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>; Fortner, Richard <Richard.Fortner@norfolk.gov>; Newcomb, Leonard <Leonard.Newcomb@norfolk.gov>
Subject: RE: Re-inspection 2410 West Ave

My understanding is that the issues (most recently a mechanical inspection for an unvented gas heater was failed on the 20th) you are having are being written under the Property Maintenance Code which is not within the Planning Department; property maintenance issues are addressed by the Department of Neighborhood Development of which Mr. James Rogers (copied above) is the Director.

George M. Homewood, FAICP CFM

Director

THE CITY OF NORFOLK
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-inspecton 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,

Makiba

From: Homewood, George <George.Homewood@norfolk.gov>
Sent: Monday, March 27, 2017 1:15 PM
To: Makiba
Cc: Hall, Cynthia; Rogers, James; Johnson, Sherry; Johnson, Joseph; Fortner, Richard; Newcomb, Leonard
Subject: RE: Re-inspection 2410 West Ave

My understanding is that the issues (most recently a mechanical inspection for an unvented gas heater was failed on the 20th) you are having are being written under the Property Maintenance Code which is not within the Planning Department; property maintenance issues are addressed by the Department of Neighborhood Development of which Mr. James Rogers (copied above) is the Director.

George M. Homewood, FAICP CFM
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From: Makiba [mailto:makibam@aol.com]
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Thanks,

Makiba

From: postmaster@norfolkgov.onmicrosoft.com
Sent: Friday, March 24, 2017 10:23 PM
To: makibam@aol.com
Subject: Undeliverable: Grievance
Attachments: details.txt; Grievance (12.0 KB)

Delivery has failed to these recipients or groups:

kenneth.c.alexander@norfolk.gov
Your message couldn't be delivered. Despite repeated attempts to contact the recipient's email system it didn't respond.

Contact the recipient by some other means (by phone, for example) and ask them to tell their email admin that it appears that their email system isn't accepting connection requests from your email system. Give them the error details shown below. It's likely that the recipient's email admin is the only one who can fix this problem.

For more information and tips to fix this issue see this article:
http://go.microsoft.com/fwlink/?LinkId=389361.

Diagnostic information for administrators:

Generating server: BN6PR09MB1665.namprd09.prod.outlook.com
Receiving server: BN6PR09MB1665.namprd09.prod.outlook.com
Total retry attempts: 58

kenneth.c.alexander@norfolk.gov
3/25/2017 2:23:16 AM - Server at BN6PR09MB1665.namprd09.prod.outlook.com returned '550 5.4.300 Message expired -> 451 4.4.398 Error communicating with frontend host. -> 421 4.4.2 Connection dropped due to SocketError'
3/25/2017 2:06:14 AM - Server at edge.norfolk.gov (10.97.2.27) returned '451 4.4.398 Error communicating with frontend host. -> 421 4.4.2 Connection dropped due to SocketError'

Original message headers:

```
Received: from BN6PR09MB1668.namprd09.prod.outlook.com (10.173.162.135) by
 BN6PR09MB1665.namprd09.prod.outlook.com (10.173.162.7) with Microsoft SMTP
 Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_128_CBC_SHA256_P256) id
 15.1.991.14; Thu, 23 Mar 2017 03:20:47 +0000
Received: from MWHPR09CA0029.namprd09.prod.outlook.com (10.173.46.143) by
 BN6PR09MB1668.namprd09.prod.outlook.com (10.173.162.135) with Microsoft SMTP
 Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384_P384) id
 15.1.977.11; Wed, 22 Mar 2017 18:00:45 +0000
```

Makiba

From: Pishko, Bernard <bernard.pishko@norfolk.gov>
Sent: Wednesday, March 22, 2017 6:34 PM
To: Makiba; Mayor; Moye, Luanne; Hall, Cynthia; Alexander, Kenneth
Cc: Homewood, George
Subject: RE: Grievance

Ms gaines, cindy has been out of the office this and last week. If you need an inspection, it is most expeditious to deal with the inspectors. I have copied George Homewood, the head of planning which I think is the inspector's department.

From: Makiba [mailto:makibam@aol.com]
Sent: Wednesday, March 22, 2017 2:00 PM
To: Mayor <mayor@norfolk.gov>; Moye, Luanne <luanne.moye@norfolk.gov>; Hall, Cynthia <cynthia.hall@norfolk.gov>; Alexander, Kenneth <Kenneth.Alexander@norfolk.gov>; Pishko, Bernard <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

Makiba

From: Hall, Cynthia <cynthia.hall@norfolk.gov>
To: Makiba
Sent: Wednesday, March 22, 2017 2:37 PM
Subject: Read: Grievance

Your message

To: Hall, Cynthia
Subject: Grievance
Sent: Wednesday, March 22, 2017 2:00:14 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Wednesday, March 22, 2017 2:37:16 PM (UTC-05:00) Eastern Time (US & Canada).

Makiba

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

Tracking:

Recipient	Read
'mayor@norfolk.gov'	
'luanne.moye@norfolk.gov'	
'cynthia.hall@norfolk.gov'	Read: 3/22/2017 2:37 PM
'kenneth.alexander@norfolk.gov'	Read: 3/22/2017 2:01 PM
'bernard.pishko@norfolk.gov'	Read: 3/22/2017 3:08 PM
'kenneth.c.alexander@norfolk.gov'	

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

Makiba

From: Fortner, Richard <Richard.Fortner@norfolk.gov>
Sent: Wednesday, March 22, 2017 11:31 AM
To: Makiba
Cc: Hall, Cynthia; Johnson, Sherry
Subject: RE: 2410 West Ave, Appeal denial

Makiba,

My apologies, the appeal denial is attached.

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

From: Makiba [mailto:makibam@aol.com]
Sent: Wednesday, March 22, 2017 11:22 AM
To: Fortner, Richard <Richard.Fortner@norfolk.gov>
Subject: Re: 2410 West Ave, Appeal denial

Hello,
You only attached our appeal, and not a denial letter.

Sent from my iPhone

On Mar 22, 2017, at 11:10 AM, Fortner, Richard <Richard.Fortner@norfolk.gov> wrote:

> Dear Mr. and Mrs. Gaines,
>
> Please see the attached denial concerning your appeal request. The original documents have been mailed to 7486 Hughart St. Norfolk, VA 23505.
>
> Best regards,

Rick Fortner, CBO, CFM
Building Commissioner

<image011.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
<image012.jpg><image013.jpg><image014.jpg><image015.jpg>

<2410 West Ave appeal request.pdf>

Makiba

From: Fortner, Richard <Richard.Fortner@norfolk.gov>
Sent: Wednesday, March 22, 2017 11:10 AM
To: makibam@aol.com
Cc: Hall, Cynthia; Johnson, Sherry
Subject: 2410 West Ave, Appeal denial
Attachments: 2410 West Ave appeal request.pdf

Dear Mr. and Mrs. Gaines,

Please see the attached denial concerning your appeal request. The original documents have been mailed to 7486 Hughart St. Norfolk, VA 23505.

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

Makiba

From: Hall, Cynthia <cynthia.hall@norfolk.gov>
To: Makiba
Sent: Monday, March 20, 2017 11:49 AM
Subject: Read: Re-inspection

Your message

To: Hall, Cynthia
Subject: Re-inspection
Sent: Monday, March 20, 2017 10:54:32 AM (UTC-05:00) Eastern Time (US & Canada)

was read on Monday, March 20, 2017 11:48:35 AM (UTC-05:00) Eastern Time (US & Canada).

Makiba

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

Tracking:

Recipient	Read
'cynthia.hall@norfolk.gov'	Read: 3/20/2017 11:49 AM
'sherry.johnson@norfolk.gov'	
'joseph.johnson@norfolk.gov'	Read: 3/20/2017 10:55 AM

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

WRITTEN ARGUMENTS SUBMITTED BY GAINES

VIRGINIA:

BEFORE THE

STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD) (For Preliminary Consideration as to Timeliness)

IN RE: Joshua and Makiba Gaines Appeal No. 17-11

APPELLANT'S SUPPLEMENTAL RESPONSES AND CORRECTIONS

Joshua and Makiba Gaines, (collectively "the Gaineses"), hereby submit their supplemental responses and corrections to the Suggested Summary of the Appeal in the above styled action as follows:

1. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

2. SUPPLEMENT REQUESTED. On Feb. 15, 2017, the City of Norfolk placed a placard on the building but did not send the Feb. 15, 2017 Notice of Violation to the Gaines' by certified mail nor was a copy of the notice affixed to the structure. It was mailed "return service requested" to PO Box 8393, Norfolk, Va., 23503, which was not the Gaines' last known address. The placard affixed to the building did not inform the Gaines' of their independent right to appeal the code official's decision that the property was unsafe or unfit for human habitation.

3. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

4. OBJECTION. Objection as to the use of the word "placard," because on Mar. 20, 2017, the Gaineses were provided a copy of the notice of violation that the building was unsafe or unfit for human habitation.

** ADDITIONAL STATEMENT REQUESTED. The Gaineses placed calls to the City of Norfolk's "Norfolk Cares Line" during the week of Feb. 13, 2017 inquiring about the process of taking appeal from the Feb. 7, 2017 decision but City representatives were unable to provide assistance.

5. SUPPLEMENT AND CORRECTION REQUESTED. Codes Inspector, Joseph Johnson, re-inspected the property on Mar. 20, 2017 at 10:00 AM. See Exhibit A, at 2–3. On Mar. 20th, Inspector Johnson personally provided the Gaineses with a copy of the notice dated for Feb. 15, 2017. *Id*. The Feb. 15, 2017 Notice of Violation did not include a statement informing the

Gaineses of their right to appeal the code official's decision that the building was unsafe and unfit for human habitation. Nonetheless, on Mar. 20, 2017, the Gaineses visited the Fifth Floor of Norfolk's City Hall to inquire about the possibility of appealing the Feb. 15, 2017 Notice of Violation. The Gaineses spent approximately one hour in the building seeking help with filing the appeal. In a partially recorded interaction, Mr. Fortner on the First Floor permitted the Gaineses to appeal the Feb. 15, 2017 Notice of Violation.

6. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

7. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

8. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

9. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

<u>Suggested Issue for Resolution by the Review Board</u>

1. NO SUPPLEMENTAL RESPONSES OR CORRECTIONS REQUESTED.

January 5, 2018 4:15 PM

M. Gaines

Makiba Gaines

Joshua Gaines

Joshua Gaines
makibam@aol.com
757-389-6563

ARGUMENT

The State Technical Review Board should reverse the LBBCA's decision that the Gaines' appeal was untimely because the Gaineses did not receive notice of the Feb. 15, 2017 decision until it was personally served to them on Mar. 20, 2017. The notice received by the Gaineses on Mar. 20, 2017 was still insufficient to satisfy due process because it failed to put the Gaineses on notice of their independent right to appeal the Feb. 15, 2017 decision unconnected with the right to appeal the Feb. 7, 2017 decision.

I. DISCUSSION

"[N]otice which is an elementary and fundamental requirement of due process in any proceeding is notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Combs v. City of Winchester*, 25 Va. Cir. 207 (1991). An administrative agency violates due process when it fails to abide by established procedural rules. *See, e.g., Sargent Electric Co. v. Woodall*, 228 Va. 419, 424 (1984) (holding that agency procedural rules are binding and create due process rights). Notice given by an agency under the Universal Statewide Building Code ("USBC" or the "Code") is ineffective if the agency fails to strictly comply with constitutional due process requirements. *Combs*, at 207.

Section 106.5 of the Virginia Maintenance Code reads in pertinent part:

> 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. The applicant shall submit a written request for appeal to the LBBCA within 14 calendar days of the receipt of the decision being appealed.

VMC § 106.5, 13 Va. Admin. Code 5-63-500.

In Virginia, the use of the word "aggrieved" in a statute "contemplates a denial of some personal or property right, legal or equitable." *Vulcan Materials Co. v. Board of Supervisors*, 248 Va. 18, 24 (1994) (quoting *Virginia Beach Beautification Comm'n v. Board of Zoning Appeals*, 231 Va. 415, 419–20 (1986)). Accordingly, the Gaineses had fourteen days to appeal the code official's decision dated Feb. 15, 2017, by which they were aggrieved, from the date the notice of violation was received.

1. The Gaineses did not receive constitutionally effective notice of the code official's Feb. 15, 2017 decision that the building was unsafe or unfit for human habitation until the

local enforcing agency complied with the USBC's statutory notice requirements on Mar. 20, 2017

The USBC prescribes the procedural process by which notice that a structure is unsafe or unfit for human habitation must be delivered. In accordance with the provision, "[w]hen a structure is determined to be unsafe or unfit for human occupancy by the code official, a written notice of unsafe structure or structure unfit for human occupancy shall be issued by *personal service* to the owner, the owner's agent or the person in control of such structure." VMC 105.4, 13 Va. Admin. Code 5-63-490 (E) (emphasis added). If a local enforcing agency is unable to personally serve an owner, it must satisfy two criteria: (1) it must send the notice to the owner by certified or registered mail to his last known address; and (2) affix a copy of the notice in a conspicuous place on the premises. VMC 105.5, 13 Va. Admin. Code 5-63-490 (G). A placard affixed to a structure is not a substitute for a constitutional notice—rather, the Code provides that the placard must accompany notice. *See* VMC 105.6, 13 Va. Admin. Code 5-63-490 (H) (providing that the notice shall be issued contemporaneously with the placing the placard on the structure); *see also Combs*, 207 (holding notice constitutionally inadequate on remainderman when it was only received by a life-tenant notwithstanding the warning posted on the door). Moreover, the required notice must "indicate the right of appeal by referencing the appeals section of code." VMC 104.5.4.2; VMC 105.4 (providing that the notice requirements established by VMC 104.5.4.2 are applicable in the finding that a structure is unsafe or unfit for human habitation).

For example, in *Family Home Servs., Inc. v. Norfolk*, 72 Va. Cir. 320 (2006), the Norfolk Circuit Court denied a petitioner's injunction because he received constitutionally effective notice that his property was deemed unsafe but failed to exhaust administrative remedies by timely taking appeal from the code official's decision. The City of Norfolk satisfied both statutory notice requirements. First, notice was personally served to the petitioner one the day after its issuance. Even though personal service was effective, the City of Norfolk (1) mailed a copy of the notice of violation to the petitioner's last known address by certified mail; and (2) affixed a copy of the notice of violation to the property. The petitioner did not physically receive the mailed notice, but it was sent to his correct address affording him the opportunity to retrieve it. Moreover, the City posted a copy of the letter on the premises. Importantly, the letter which was mailed and posted, included a statement informing the petitioner of his right to appeal the

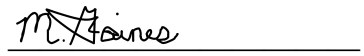
decision that the building was unsafe. The court concluded that the petitioner received notice because the local enforcing agency effectively delivered it in accordance with the statute; moreover, the notice properly advised the petitioner of his right to take an appeal from the decision.

In the instant case, the City of Norfolk issued a notice of violation that the structure was unsafe or unfit for human habitation on Feb. 15, 2017 but failed to comply with constitutional notice requirements until Mar. 20, 2017. What distinguishes the Gaines' case from the petitioner's in *Family Home Svcs*. is that the City of Norfolk never attempted to personally serve the Gaineses until Mar. 20, 2017, as required by the Code. The City of Norfolk impermissibly circumvented the first requirement of personal service, proceeding directly to the secondary method of notice by mailing a copy of Feb. 15, 2017 notice to the Gaines' at a former address. However, the address used was not the Gaines' last known address and they did not have the opportunity to retrieve it. The City of Norfolk has not shown the Feb. 15, 2017 notice was sent by certified or registered mail. Additionally, the City of Norfolk failed to satisfy the secondary method because it did not post a copy of the notice on the door. Diverging from its approach in *Family Home Svcs*., the letter issued by the City of Norfolk on Feb. 15, 2017, did not inform the Gaines' of their independent right to take appeal from the decision that the building was unsafe or unfit for human habitation. The City of Norfolk failed to satisfy the due process requirements provided by the code; accordingly, the Gaineses did receive constitutionally effective notice until the code official complied with the statute.

CONCLUSION

The City of Norfolk failed to deliver the Feb. 15, 2017 Notice of Violation to the Gaineses as required by statute and the Gaines' procedural due process rights. The Gaineses did not receive notice until it was personally served to them on Mar. 20, 2017. The notice finally received by Gaineses still suffered a constitutional defect because it failed to apprise the Gaineses of their right to appeal the Feb. 15, 2017 decision, independent of and unconnected with the right to appeal the Feb. 7, 2017 decision, as required by the Code. Therefore, the Gaineses respectfully requests the Technical Review Board to reverse Norfolk's LBBCA decision and to find their appeal was properly timely filed.

January 5, 2018 4:15 PM



Makiba Gaines

Joshua Gaines
makibam@aol.com
757-389-6563

EXHIBIT A

From: Makiba <makibam@aol.com>
To: cynthia.hall <cynthia.hall@norfolk.gov>
Subject: Placard
Date: Thu, Feb 23, 2017 1:11 pm
Attachments: DRSheet_190035NOR.pdf (140K)

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

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>
Subject: RE: Please provide
Date: Fri, Mar 17, 2017 2:48 pm

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

From: Makiba <makibam@aol.com>
To: cynthia.hall <cynthia.hall@norfolk.gov>; sherry.johnson <sherry.johnson@norfolk.gov>; joseph.johnson <joseph.johnson@norfolk.gov>
Subject: Re-inspection
Date: Mon, Mar 20, 2017 10:52 am

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

PAGE 3

WRITTEN ARGUMENTS SUBMITTED BY THE CITY OF NORFOLK

NORFOLK
Office of the City Attorney

January 5, 2018

(via email delivery due to weather)

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: Preliminary Hearing for Joshua & Makiba Gaines
Appeal No. 17-11

Dear Mr. Luter:

On February 7, 2017, a notice of violation was issued to Joshua Gaines for property maintenance violations relating to the rental property at 2410 West Avenue, Norfolk, Virginia. One of the violations cited was Code Section 603.1 – 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. Mr. Gaines was instructed to repair or replace the HVAC system and was specifically told that "[f]ailure to have a working heating system could result in the property being placarded." No appeal was filed to the Local Board of Building Code Appeals from this notice of violation. Mr. Gaines admits he did not appeal.

When the HVAC system was not repaired or replaced, the property was placarded as unfit for habitation and a notice of placarding was issued on February 15, 2017. The property was placarded with a visible notice on the door.

Mr. Gaines claims he did not receive actual notice of the placarding until March 21, 2017. This is untrue.

810 Union Street, Suite 900 • Norfolk, VA 23510
(757) 664-4529 • Fax: (757) 664-4201

On February 28, 2017, within the time period in which Mr. Gaines could have filed a timely appeal of the placard notice to the Local Board of Building Code Appeals, Mr. Gaines signed a Complaint for Injunction and Declaratory Relief which was filed in Norfolk Circuit Court. (Copy of Complaint for Injunction attached for submittal as additional evidence in this proceeding). This Complaint for Injunction specifically referenced the placarding of 2410 West Avenue, Norfolk, Virginia on or about February 16, 2017, and asked the Court to require the City to remove the placard and allow occupancy. At the injunction hearing, the February 15, 2017 Notice of Placard was an exhibit and reviewed by Mr. Gaines. After hearing all the evidence and reviewing the exhibits introduced, the Court denied Mr. Gaines' injunction request and refused to order the City to remove the placard, instead indicating to Mr. Gaines that a simple solution appeared to be for Mr. Gaines to repair or replace the HVAC system and get it inspected. (Copy of Court Order attached for submittal as additional evidence in this proceeding).

Mr. Gaines had actual notice on February 7, 2017 that the HVAC system had to be repaired or replaced, or the property could be placarded. Mr. Gaines also had actual notice that the property was placarded on February 15, 2017 because Mr. Gaines sought an Injunction in Norfolk Circuit Court and referenced the placarding date in the Court pleadings signed on February 28, 2017.

Mr. Gaines now seeks to claim he had no notice of the placarding until March 21, 2017 which is simply not borne out by the facts in this case.

For the foregoing reasons, the decision of the Local Board of Building Code Appeals should be upheld and this appeal should be denied as untimely filed.

Very truly yours,

Cynthia B. Hall
Deputy City Attorney

CBH:sb
Attachments

cc: Mr. & Mrs. Joshua Gaines **(via email delivery due to weather)**

IN THE CIRCUIT COURT OF VIRGINIA FOR THE CITY OF NORFOLK

JOSHUA GAINES

Plaintiffs,

v.

CITY OF NORFOLK

NORFOLK CITY ATTORNEY, BERNARD PISHKO

Defendant.

Service Address:
810 Union Street
Suite 900
Norfolk, Va. 23510

810 Union St
Suite 508
Norfolk, VA 23510

COMPLAINT FOR INJUCTION AND DECLARATORY RELIEF

Plaintiffs, Joshua Gaines (hereinafter, "Plaintiff"), pursuant to Virginia Code § 801-620, for his Complaint for temporary restraining order and preliminary injunction against the City of Norfolk (hereinafter "City").

Code Inspectors for the City have repeatedly cited and placarded the Plaintiff's real properties for code violations without lawful authority, and is currently restricting entry, and enjoyment of his property located at 2410 West Ave., Norfolk, Va. 23504. The Plaintiff brings this action for temporary restraining order and preliminary injunction to stop the City's unconstitutional and unlawful denial of property.

STATEMENT OF JURISDICTION AND VENUE

This Court has jurisdiction over this action pursuant to Virginia Code § 801-620.

FACTUAL BACKGROUND AND SUMMARY

A. The first unlawful denial of property

1. On 07/28/2016, Inspector Kimberly Wingate-Harrell conducted an unauthorized inspection on 1221 Curie Ct., Norfolk, Va. 23513, a single family residence, and rendered it unsafe and unfit for human occupancy due no air conditioning under Virginia Maintenance Code ("VMC") 602.4 which only applies to R-2 apartment building structures.
2. A vivid green notice, which threatened a criminal penalty for anyone who entered or occupied the property, was affixed to the front door.
3. The City ejected the tenant from the property, and prohibited all persons from entering it under the threat of criminal punishment.
4. The property fell outside of the scope of the provision it was placarded under because it was not an R-2 structure.
5. In recognition of its error, the City removed the placard at 9:00 AM the following morning, without any additional repairs made by the property's owner.

B. <u>The second unlawful denial of property</u>

6. The plaintiff repeats and re-alleges each of the foregoing paragraphs as though fully set forth herein.
7. On Jan. 6, 2017, Code Inspector Michael Minton placarded the Plaintiff's *unoccupied* property located at 453 &465 Worth Ave., Norfolk, Va., 23505, citing violations under §§ 504.3, 602.2 of the VMC which read:

> Where it is found that a plumbing system in a structure constitutes a *hazard to the occupants or the structure* by reason of inadequate service or the structure by reason of inadequate service, inadequate venting, cross-contamination, backsiphonage, improper installation, deterioration, or damage or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.

VMC. § 504.3.

> 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 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

VMC. § 602.2.

8. The cited provision did not apply to the property when it was placarded because unoccupied properties fall outside the scope of both provisions.

9. At the time of the unlawful placarding, Michael Minton was not in compliance with his continuing education requirements as required to knowledgably enforce the codes.

10. The Plaintiff met with the Cynthia Hall, City Attorney for the City of Norfolk on Jan. 19, 2017, and agreed that the placard would be removed without additional action by the Plaintiff. The Plaintiff agreed to ensure that the heating and water system was operable prior to renting the units.

11. The placard was removed the next day. However, the City official who removed the placard did so haphazardly and caused additional damage to the door.

12. Mr. Minton, the code official, knowingly made a false statement to the Plaintiff's prospective tenant, inciting him to threaten the Plaintiff with physical violence and arson.

C. The current unlawful deprivation of property

13. The plaintiff repeats and re-alleges each of the foregoing paragraphs as though fully set forth herein.

14. On or about 02/16/2017, Mr. Gaines property at 2410 West Ave., Norfolk, Va. 23504 was placarded by the City under USBC/VMC §§ 603.1 "Mechanical Equipment," 605.1 "Electrical Equipment."

15. The codes inspector placed a vivid notice on the door which reads "no one may *enter* or occupy the property" with the threat of criminal punishment.
16. Michael and Sons, the Plaintiffs' heating repair technicians, are refusing to enter the property because of the notice.
17. The Plaintiff is unable to secure any other HVAC worker who will enter the property with the notice attached.
18. The property is currently not occupied.

CLAIM FOR RELIEF

19. The plaintiff repeats and re-alleges each of the foregoing paragraphs as though fully set forth herein.
20. The Plaintiff now claims that he has no adequate remedy at law, and will continue to suffer irreparable harms without injunctive relief.
21. His claim will survive on the merits because the placard is unlawful for three reasons: 1) the City lacks the statutory authority under §§ 603.1, 605.1 to placard a structure; 2) the City lacks the statutory authority to restrict all entry to a property once placarded; and 3) even if this Court can construe a statutory authority, it should find that the code is a) unconstitutionally invites standard-less discretion, b) is void for vagueness, and/or c) violates the Plaintiff's due process rights because the requirement is arbitrary and irrational.
22. The City continues these unconstitutional practices against the Plaintiff, and other citizens; the public's interest is best served by injunction.

WHEREFORE, with respect to each count, the Plaintiff respectfully requests that the Court grant the following relief:

a. Issue a permanent injunction, barring the Defendant and/or its successors, agents, delegates or assigns from any acts which damage the Plaintiff's property and which harm the Plaintiff in the use of its property as the Plaintiff sees fit;

b. Award the plaintiff its costs of suit; and

c. Award such other and further relief as the Court deems just.

BY: _____

Pro se

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

M. A
02-28-17

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

JOSHUA GAINES, :

Petitioner, :

v. : Case No.: CL17-2818

CITY OF NORFOLK, :

Respondent. :

ORDER

Comes now, the Petitioner, pro se, and the City of Norfolk, by counsel, and after hearing argument and reviewing evidence presented, the Petitioner's Request for ~~an~~ a temporary Injunction is hereby denied. (CB4)

It is so Ordered this 10th day of March, 2017.

Judge, Norfolk Circuit Court

David W. Lannetti, Judge

I ask for this:

Cynthia B. Hall, Deputy City Attorney

COPY TESTE:
GEORGE E. SCHAEFER, CLERK
NORFOLK CIRCUIT COURT
BY
Jenell McGowan, Deputy Clerk
Authorized to sign on behalf
of George E. Schaefer
Date 3/10/17

Seen and objected to:

Joshua Gaines

Seen and objected

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Harvey Dupree (A...H Variety)
Appeal No. 17-10

CONTENTS

VIRGINIA:

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

IN RE: Harvey Dupree (A…H Variety)
Appeal No. 17-10

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. In August of 2017, a representative of the State Fire Marshal's Office (SFMO) conducted an inspection at 456-554 Piney Pond Road in Brunswick County. The buildings at that address are used to sell merchandise under the business name of A…H Variety, owned by Harvey and Ann Dupree.

2. The inspection resulted in the issuance of a notice of violation, dated August 29, 2017, under the Virginia Statewide Fire Prevention Code (SFPC). Twelve violations of the SFPC were cited.

3. Mr. Dupree filed an appeal to the Review Board on September 1, 2017 indicating on the appeal documents that the notice of violation was invalid since Ms. Dupree was not notified. In addition, Mr. Dupree stated that the back door is only used as a loading dock and is not an entrance or exit.

4. Review Board staff conducted an informal fact-finding conference in September of 2017, attended by the representatives of the SFMO. Mr. Dupree was properly notified of the conference but was not in attendance.

5. The cited violations were discussed at the conference and the SFMO representatives indicated a reinspection would occur and that pictures of the violations would be submitted.

6. Subsequent to the conference, the SFMO issued a new notice of violation dated September 29, 2017 and submitted multiple pictures. The new notice cited fifteen violations.

7. Review Board staff added staff notes to both notices to number each violation to enable an easier comparison of the notices. The following is a result of the comparison:

> Violation #1 on the initial notice of violation correlates to Violations #1 and #5 on the new notice. The new notice better describes the violations.
>
> Violations #2 and #3 on the initial notice appear to have been corrected as they are not cited on the new notice and the SFMO indicated in an email that some violations had been corrected.
>
> Violation #4 on the initial notice correlates to Violation #3 on the new notice and the new notice better describes the violation.
>
> Violation #5 on the initial notice correlates to Violation #4 on the new notice and the new notice better describes the violation.
>
> Violation #6 on the initial notice correlates to Violations #9, #10, #11 and #12 on the new notice and the new notice better describes the violations.
>
> Violation #7 on the initial notice correlates to Violation #14 on the new notice and appears to limit it to only one instance.
>
> Violation #8 on the initial notice correlates to Violation #13 on the new notice and the new notice better describes the violation.
>
> Violations #9 and #10 on the initial notice correlate to Violations #6, #7 and #8 on the new notice and the new notice better describes the violations.
>
> Violations #11 and #12 on the initial notice appear to have been corrected as they are not cited on the new notice and the SFMO indicated in an email that some violations had been corrected.

8. This staff summary was distributed to the parties along with all documents received from the parties and opportunity was given for the submittal of additions, corrections or objections to the summary and for submittal of additional documents, pictures or written arguments.

<u>Suggested Issues for Resolution by the Review Board</u>

1. Whether to overturn the outstanding violations on the August 29, 2017 notice of violation issued by the SFMO due to the SFMO not notifying Ms. Dupree; and, if not overturning for that reason, then:

2. Whether to overturn any or all of the outstanding violations on the August 29, 2017 notice of violation in consideration of their merits.

COMBINED DOCUMENTS

Brook M. Pittinger
Acting Executive
Director

Brian M. McGraw, P.E.
State Fire Marshal

Central Regional Office
State Fire Marshals Office
1005 Technology Park Drive
Glen Allen, VA 23059-4500
Phone: (804) 371-0220
Fax: (804) 371-3367
Dee Madsen
Fire Marshal Supervisor

Commonwealth Of Virginia
Department of Fire Programs
State Fire Marshal's Office
Inspection Notice

Date of Inspection:

08/29/2017

Owner/Occupant: Harvey M. Dupree & Ann N Dupree Building Name: BRUNSWICK - A & H Variety and Flea Market Address: 456 - 554 Piney Pond Rd. Bradnax, 23920	File Number: C-1270-001 Occ/Use Code: OTHER

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

Code Section	Violation(s)	Correct By
1030.2	Reliability. Required exit accesses, exits or exit discharges shall be continuously maintained free from obstructions or impediments to full instant use in the case of fire or other emergency when the building area served by the means of egress is occupied. An exit or exit passageway shall not be used for any purpose that interferes with a means of egress.	Immediately
Staff Note: Violation #1	There are exits that are locked and barricaded shut in the direction of egress in the warehouse and sewing building. These areas shall not be occupied or all exits shall be unlocked in the direction of egress so occupants can egress to the public way.	

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Notice Issued To: **Harvey M. Dupree**

Inspected By: **Dee Madsen, Fire Marshal Supervisor**

Date: 8/29/2017

Brook M. Pittinger
Acting Executive
Director

Brian M. McGraw, P.E.
State Fire Marshal

Central Regional Office
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Dee Madsen
Fire Marshal Supervisor

sbco @ dhcd.in
90

804.371-7092

Commonwealth Of Virginia
Department of Fire Programs
State Fire Marshal's Office
Inspection Notice

Date of Inspection:

08/29/2017

Owner/Occupant: Harvey M. Dupree & Ann N Dupree Building Name: BRUNSWICK - A & H Variety and Flea Market Address: 456 - 554 Piney Pond Rd. Bradnax, 23920	File Number: C-1270-001 Occ/Use Code: OTHER

This is a/an Addendum

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

1030.2 Staff Note: Violation #2	Reliability. Required exit accesses, exits or exit discharges shall be continuously maintained free from obstructions or impediments to full instant use in the case of fire or other emergency when the building area served by the means of egress is occupied. An exit or exit passageway shall not be used for any purpose that interferes with a means of egress. There is storage that is located on the outside at the exit doors that obstructs egress from the building.	Immediately
1030.2 Staff Note: Violation #3	Reliability. Required exit accesses, exits or exit discharges shall be continuously maintained free from obstructions or impediments to full instant use in the case of fire or other emergency when the building area served by the means of egress is occupied. An exit or exit passageway shall not be used for any purpose that interferes with a means of egress. The loading dock outside and the rear exit of the warehouse building is damaged, has no guard rails and the steps are missing for the egress from the exit door.	9/13/2017

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Brook M. Pittinger
Acting Executive
Director

Brian M. McGraw, P.E.
State Fire Marshal

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Commonwealth Of Virginia
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Inspection Notice

Date of Inspection:

08/29/2017

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The back door stays locked it is a loading dock

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

1030.2	Reliability. Required exit accesses, exits or exit discharges shall be continuously maintained free from obstructions or impediments to full instant use in the case of fire or other emergency when the building area served by the means of egress is occupied. An exit or exit passageway shall not be used for any purpose that interferes with a means of egress.	9/13/2017
Staff Note: Violation #4	There is storage that obstructs the clear width of 36" of aisles for egress to an exit.	
1030.2	Reliability. Required exit accesses, exits or exit discharges shall be continuously maintained free from obstructions or impediments to full instant use in the case of fire or other emergency when the building area served by the means of egress is occupied. An exit or exit passageway shall not be used for any purpose that interferes with a means of egress.	9/13/2017
Staff Note: Violation #5	The required egress lighting is not provided for all egress paths when the building is occupied.	

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Brook M. Pittinger
Acting Executive
Director

Brian M. McGraw, P.E.
State Fire Marshal

Central Regional Office
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1005 Technology Park Drive
Glen Allen, VA 23059-4500
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Commonwealth Of Virginia
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The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

605.6	Unapproved conditions. Open junction boxes and open-wiring splices shall be prohibited. Approved covers shall be provided for all switch and electrical outlet boxes.	9/28/2017
Staff Note: Violation #6	There is open wiring, missing electrical panel covers at various locations in the building.	
1030.4	Exit signs. Exit signs shall be installed and maintained in accordance with Section 1011. Decorations, furnishings, equipment or adjacent signage that impairs the visibility of exit signs, creates confusion or prevents identification of the exit shall not be allowed.	9/28/2017
Staff Note: Violation #7	There are exit lights that are not working and there are locations where there are no exit lights to direct occupants to an exit.	

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Notice Issued To: **Harvey M. Dupree**

Inspected By: **Dee Madsen, Fire Marshal Supervisor**

Date: 8/29/2017

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Acting Executive
Director

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The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

605.1	Abatement of electrical hazards. Identified electrical hazards shall be abated. Identified hazardous electrical conditions in permanent wiring shall be brought to the attention of the responsible code official. Electrical wiring, devices, appliances and other equipment that is modified or damaged and constitutes an electrical shock or fire hazard shall not be used.	9/28/2017
Staff Note: Violation #8	There is electrical conduit and electrical cabling that is not secured according to the National Electrical Code.	

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Notice Issued To: **Harvey M. Dupree**

Inspected By: **Dee Madsen, Fire Marshal Supervisor**

Date: 8/29/2017

Brook M. Pittinger
Acting Executive
Director

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Date of Inspection:

08/29/2017

Owner/Occupant: Harvey M. Dupree & Ann N Dupree Building Name: BRUNSWICK - A & H Variety and Flea Market Address: 456 - 554 Piney Pond Rd. Bradnax, 23920	File Number: C-1270-001 Occ/Use Code: OTHER

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

605.5	Extension cords. Extension cords and flexible cords shall not be a substitute for permanent wiring. Extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings or floors, or under doors or floor coverings, nor shall such cords be subject to environmental damage or physical impact. Extension cords shall be used only with portable appliances.	9/28/2017
Staff Note: Violation #9	There are extension cords that are used as permeant wiring at numerous locations through the building.	
Staff Note: Violation #10	There are extension cords used as permeant wiring that are plugged into power strips at various locations.	
605.4.2	Power supply. Relocatable power taps shall be directly connected to a permanently installed receptacle.	9/28/2017
Staff Note: Violation #11	There are locations where there are power stripes that are plugged into another power strip at various locations.	

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Notice Issued To: **Harvey M. Dupree**

Inspected By: **Dee Madsen, Fire Marshal Supervisor**

Date: 8/29/2017

Brook M. Pittinger
Acting Executive
Director

Brian M. McGraw, P.E.
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Commonwealth Of Virginia
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Inspection Notice

Date of Inspection:

08/29/2017

Owner/Occupant: Harvey M. Dupree & Ann N Dupree Building Name: BRUNSWICK - A & H Variety and Flea Market Address: 456 - 554 Piney Pond Rd. Bradnax, 23920	File Number: C-1270-001 Occ/Use Code: OTHER

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

313.1	General. Fueled equipment, including but not limited to motorcycles, mopeds, lawn-care equipment, portable generators and portable cooking equipment, shall not be stored, operated or repaired within a building. (3 exceptions)	9/28/2017
Staff Note: Violation #12	There are lawn mowers and a generator that has fuel in the tanks and are stored inside the building.	

1. All Fueled equipment out
2. Extension cords out
3. Wiring, covers,
4. Circle doorways & lighted exit signs
5. Put door in between

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Notice Issued To: **Harvey M. Dupree**

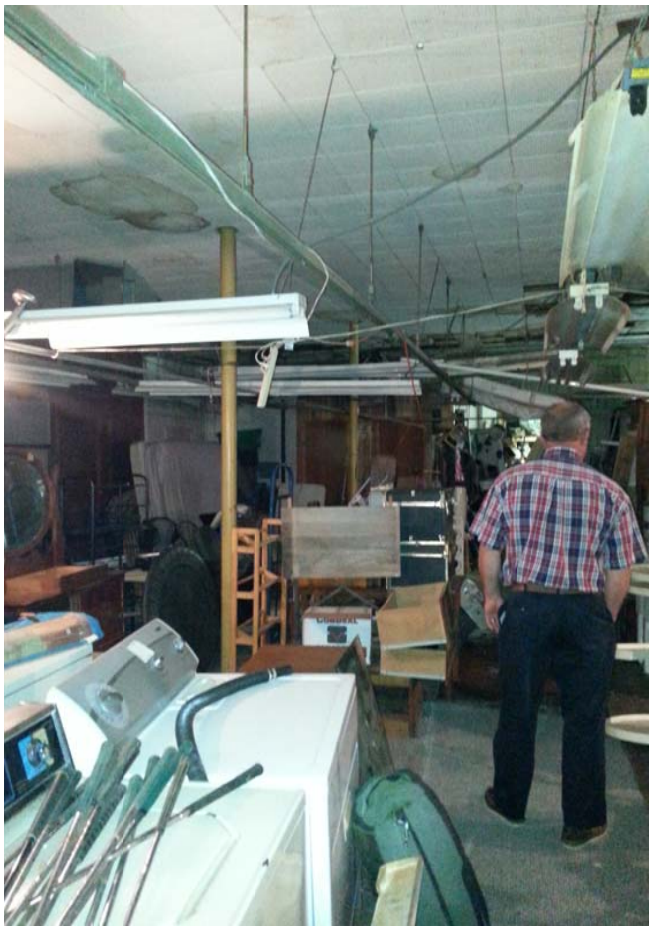
Inspected By: **Dee Madsen, Fire Marshal Supervisor**

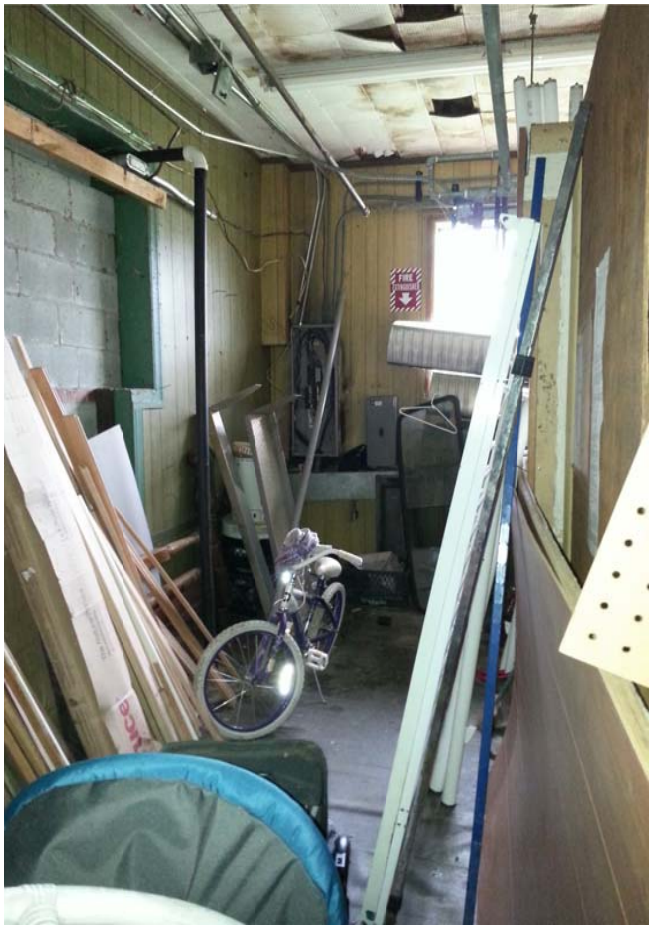
Date: 8/29/2017

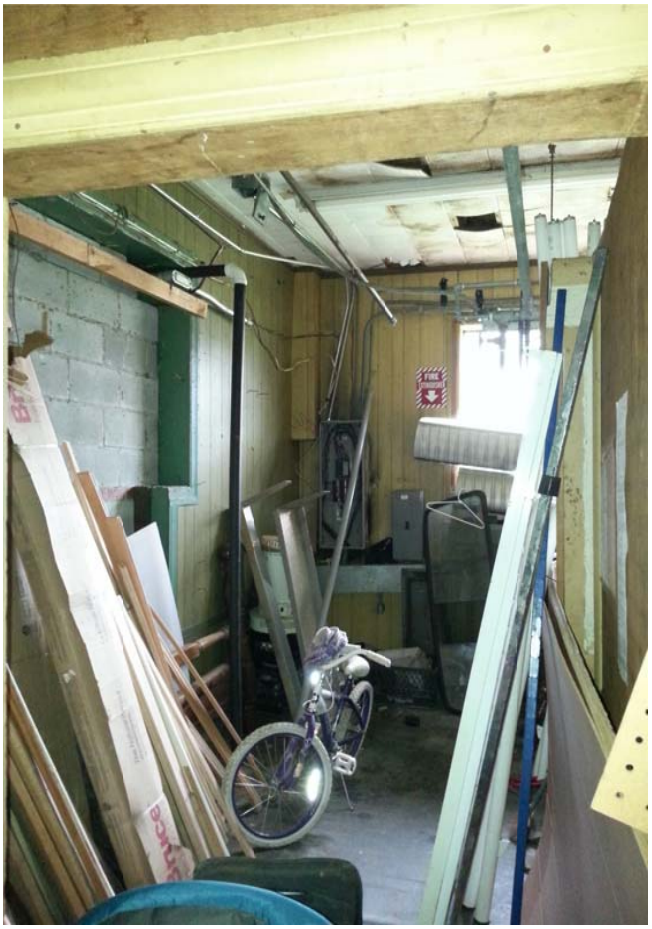

NO BEVERAGES
OR FOOD
ALLOWED
IN THIS AREA
EXIT

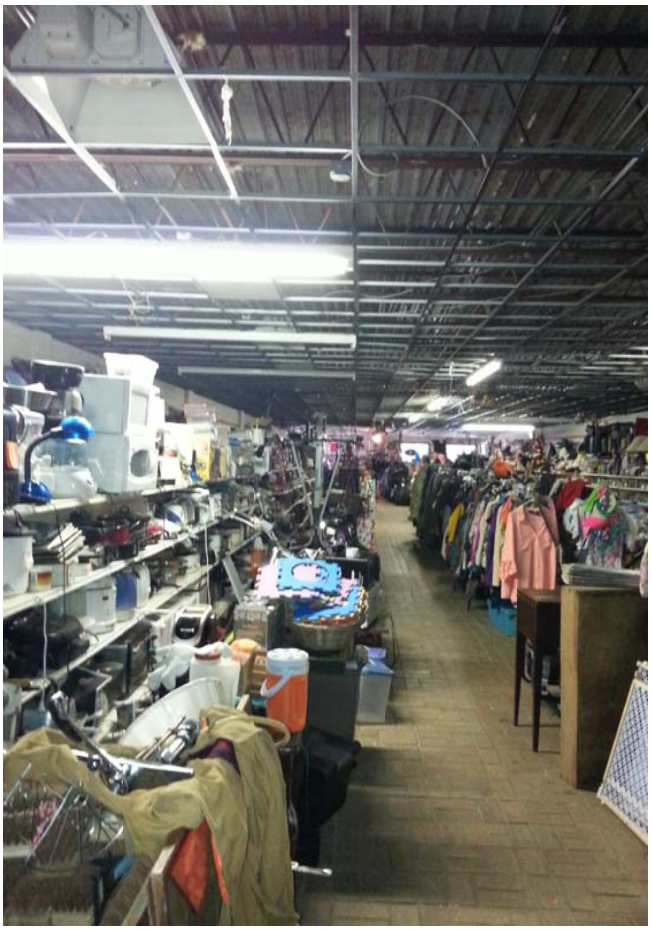

NO BEVERAGES
OR FOOD
ALLOWED
IN THIS AREA

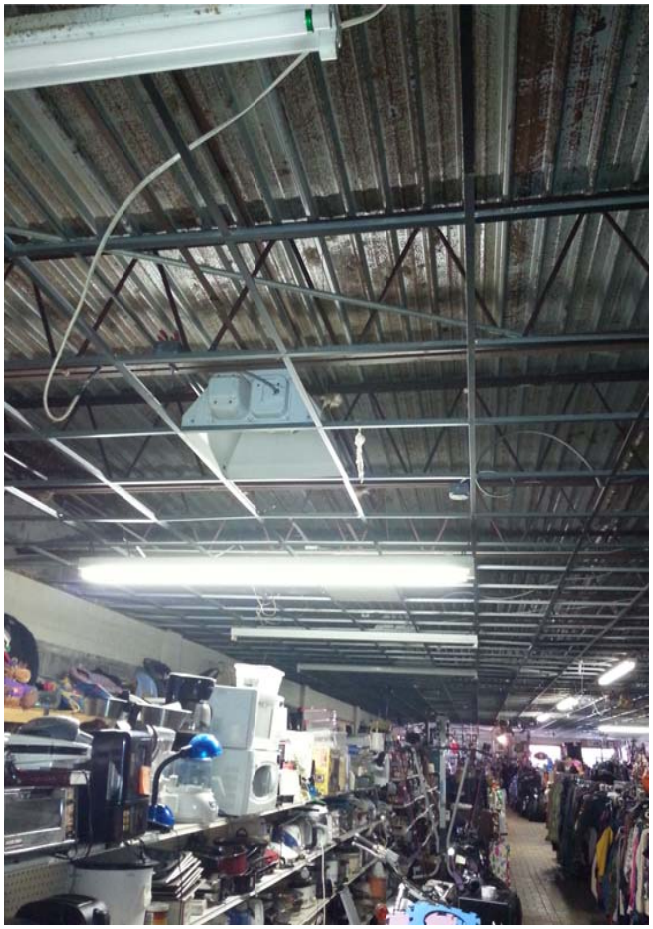

EXIT

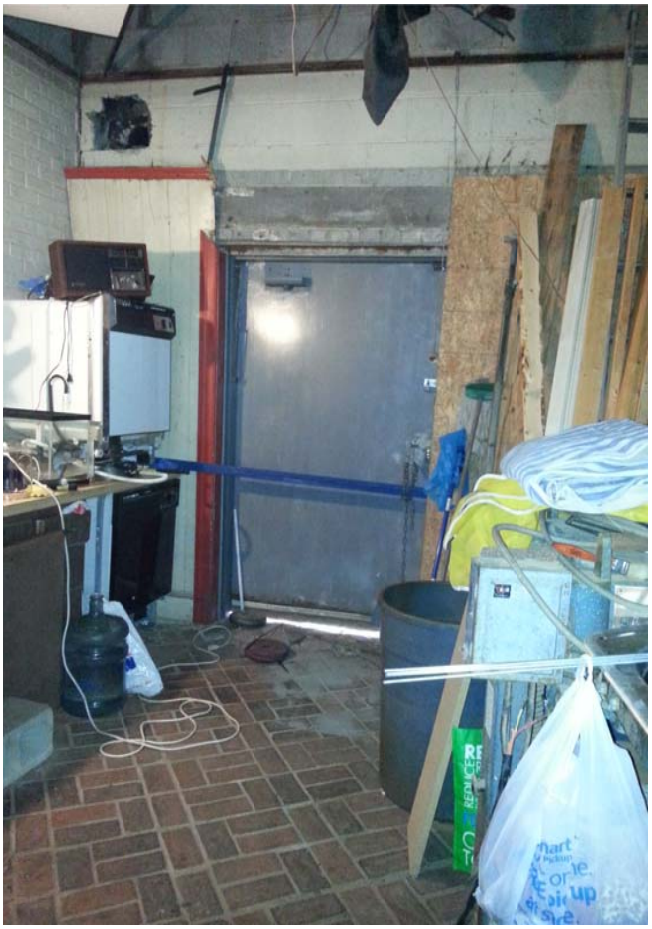


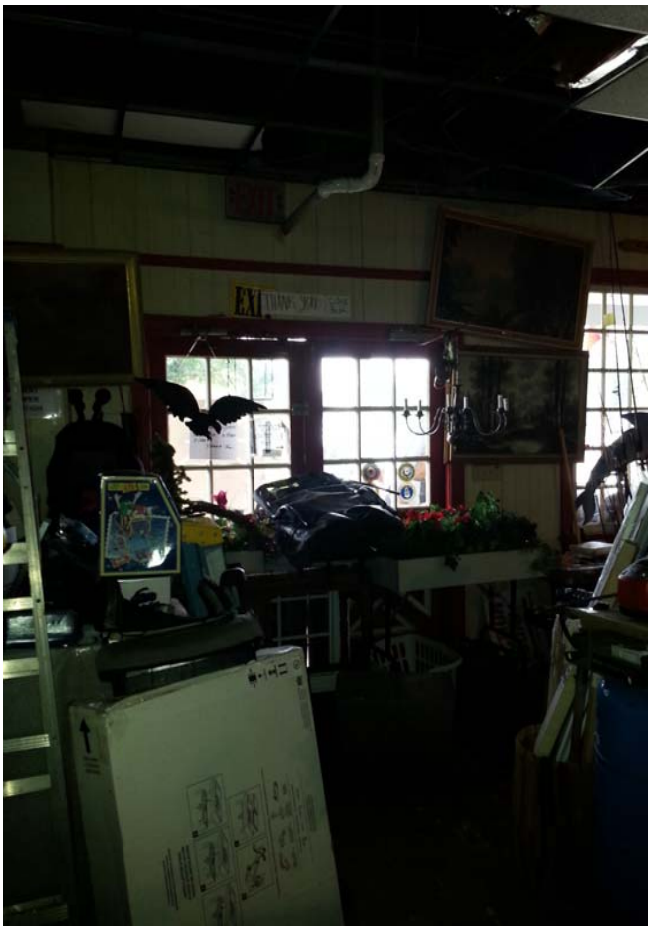


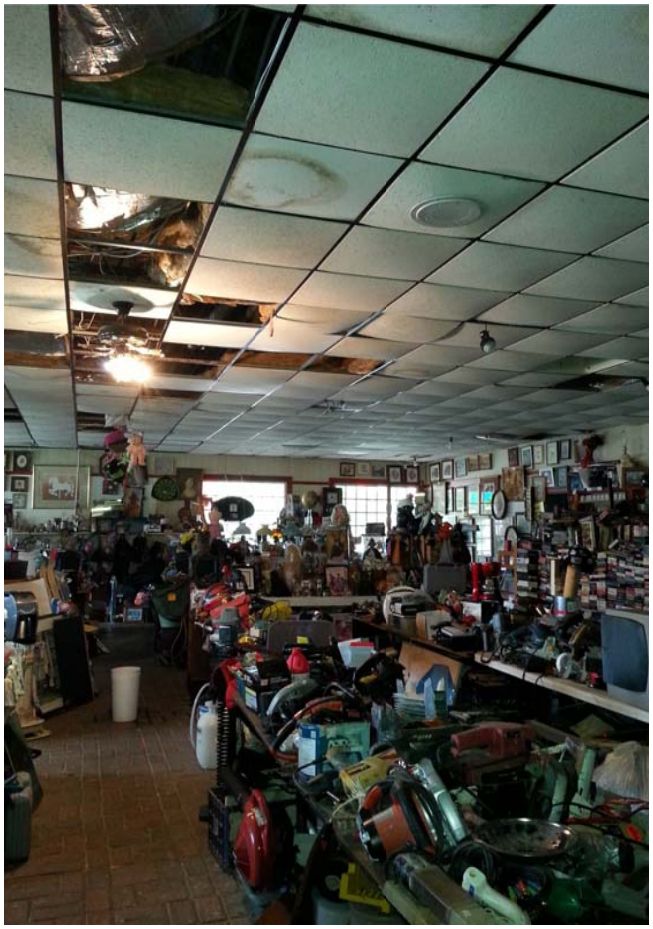










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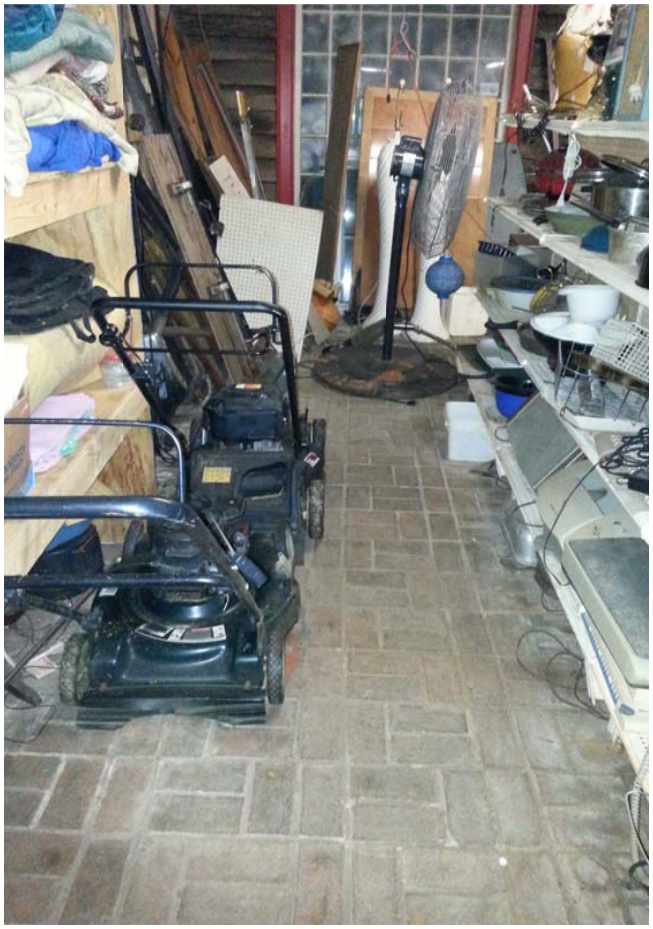


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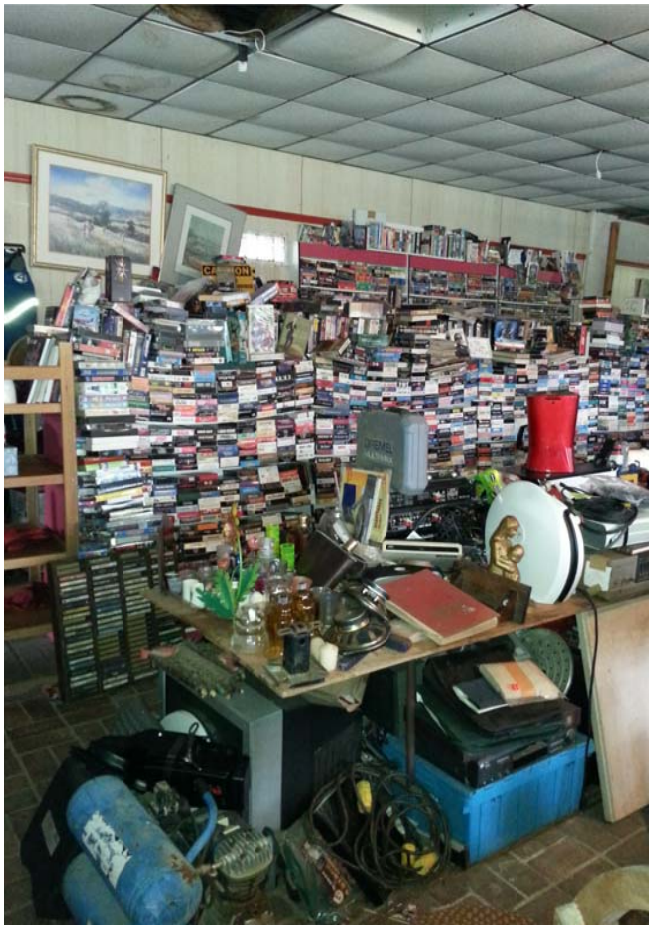
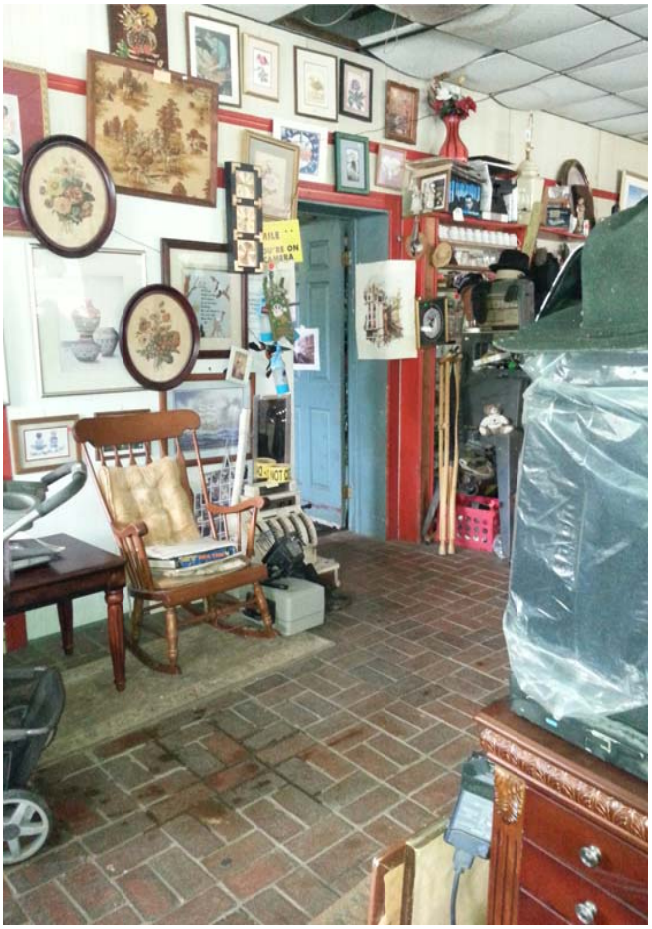
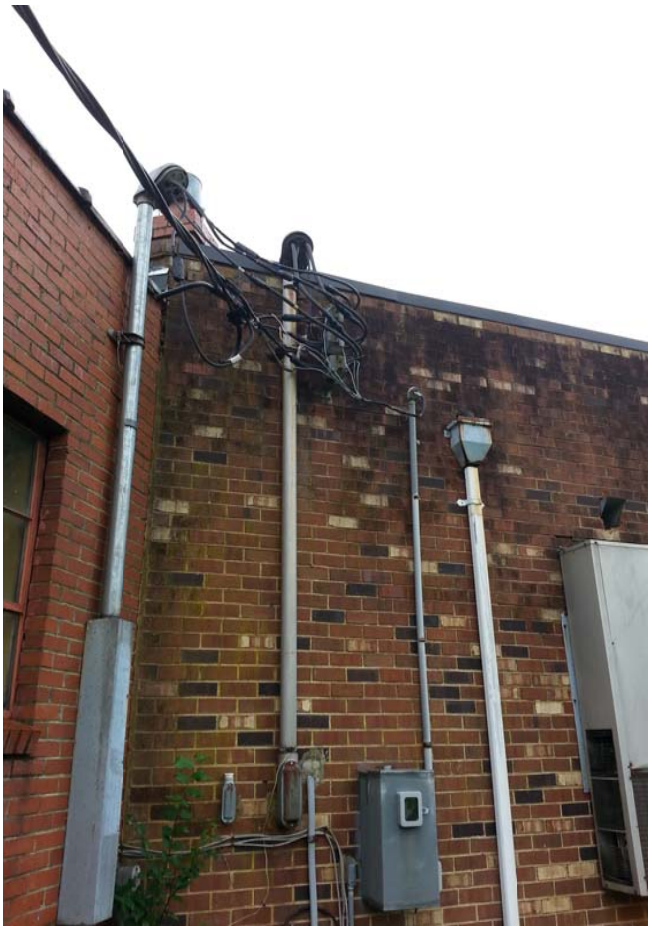





AUTHORIZED
PERSONNEL
ONLY


AUTHORIZED
EMPLOYEES
ONLY

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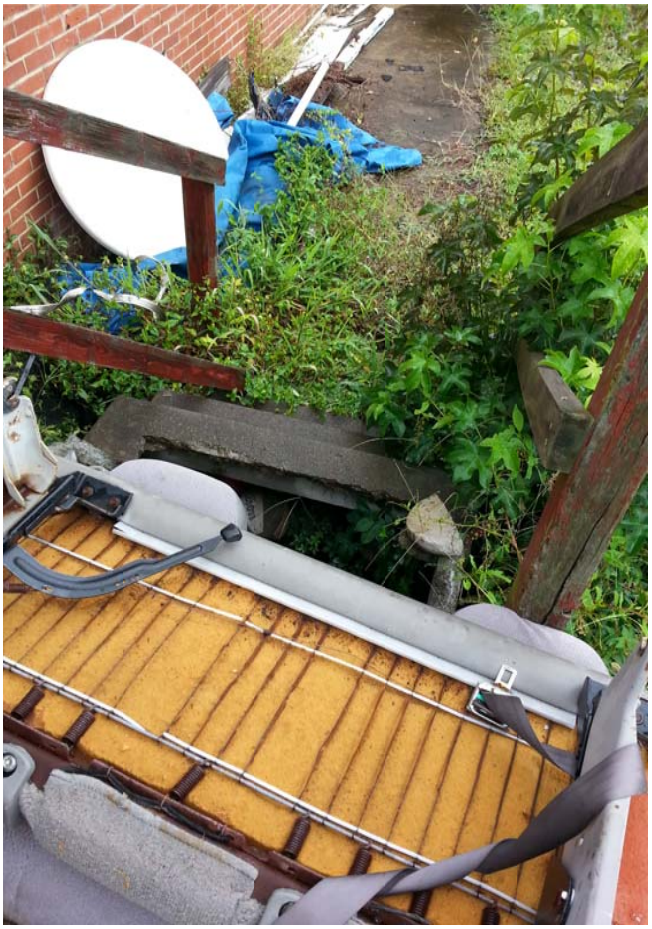

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhcd.virginia.gov

RECEIVED
SEP 6 2017
OFFICE OF THE REVIEW BOARD

APPLICATION FOR ADMINISTRATATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

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

this owner wasn't notified. (X) (HD)

Appealing Party Information (name, address, telephone number and email address):
AH. Variety / HARVEY & ANN DUPREE (2541 Landfill Rd, Basicerville VA. 23915
484 Piney Pond Rd. Bear Nek. VA
ph#434 565 2203 / Sootyharvey4@gmail.com

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

Additional Information (to be submitted with this application)
- [X] Copy of enforcement decision being appealed
- [X] Copy of record and decision of local government appeals board (if applicable and available)
- [X] Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 1 day of Sept, 2017, 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: Harvey Dupree (co-owner ANN DUPREE, different address, wasn't notified)

Name of Applicant: HARVEY DUPREE
(please print or type)

I appeal this because the other owner (ANN DUPREE: 2541 Landfill Rd Baskerville, VA. 23915) wasn't notified of this. Also, the back door is only used as a loading dock. NOT an entrance or exit.

Signed.

Nancy Dupree

From:	Madsen, Dee (VDFP)
To:	Luter, Travis (DHCD); Reynolds, Ron (VDFP)
Cc:	McGraw, Brian (VDFP); Hodge, Vernon (DHCD)
Subject:	RE: Update: Appeal of Harvey Dupree to the Review Board (Appeal No. 17-10)
Date:	Thursday, October 05, 2017 9:51:18 AM
Attachments:	image001.png

Travis Yes the revisit has been and some violations have been corrected and there is are still violations that have not been corrected. I will be sending you the revisit inspection report and the pictures from the inspection that was conducted on 8/29/17 and the revisit that was conducted on 9/29/17

From: Luter, Travis (DHCD)
Sent: Thursday, October 5, 2017 9:44 AM
To: Reynolds, Ron (VDFP) <Ron.Reynolds@vdfp.virginia.gov>
Cc: McGraw, Brian (VDFP) <Brian.McGraw@vdfp.virginia.gov>; sootyharvey4@gmail.com; Madsen, Dee (VDFP) <Dee.Madsen@vdfp.virginia.gov>; Hodge, Vernon (DHCD) <Vernon.Hodge@dhcd.virginia.gov>
Subject: Update: Appeal of Harvey Dupree to the Review Board (Appeal No. 17-10)

Ron,

Has the re-inspection of the Dupree property located at 484 Piney Pond Road Brodnax, Va. been performed? If so, are there any modifications or changes to the Notice of Violation? If you have pictures of the cited violations please send them to us.

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
(804) 371-7163 - phone
(804) 371-7092 - fax
travis.luter@dhcd.virginia.gov
Code Connection Blog ***http://dhcdcodeconnection.wordpress.com***
Click and "follow" our Blog

Brook M. Pittinger
Acting Executive
Director

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Fax: (804) 371-3367
Dee Madsen
Fire Marshal Supervisor

Commonwealth Of Virginia
Department of Fire Programs
State Fire Marshal's Office
Inspection Notice

Date of Inspection:

09/29/2017

Owner/Occupant: Harvey M. Dupree & Ann N Dupree Building Name: BRUNSWICK - A & H Variety and Flea Market Address: 456 - 554 Piney Pond Rd. Brodnax, 23920	File Number: C-1270-001 Occ/Use Code: OTHER

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

Code Section	Violation(s)	Correct By	
1030.2	Reliability. Required exit accesses, exits or exit discharges shall be continuously maintained free from obstructions or impediments to full instant use in the case of fire or other emergency when the building area served by the means of egress is occupied. An exit or exit passageway shall not be used for any purpose that interferes with a means of egress.	10/29/2017	Previous Violation
Staff Note: Violation #1	Exit double doors to the outside on the west side in the west warehouse was barricaded on the inside with a round wood pole that was inserted into metal u-bars that were attached to each door to prevent the doors from being opened. This condition restricted egress from inside the building to the public way.		
Staff Note: Violation #2	Exit door to the outside at the south west side of the west warehouse was barricaded with a metal bar on the inside that had a chain and lock around the bar and the metal u-bar that is attached to the door. Also that was a hasp that is attached to the door frame and door that was locked with a key paddle lock to prevent the doors from being opened. This condition restricted egress from inside the building to the public way.		

Failure to correct violations within the time limit specified in this notice may result in appropriate legal

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Acting Executive
Director

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Owner/Occupant: Harvey M. Dupree & Ann N Dupree Building Name: BRUNSWICK - A & H Variety and Flea Market Address: 456 - 554 Piney Pond Rd. Brodnax, 23920	File Number: C-1270-001 Occ/Use Code: OTHER

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

Staff Note: Violation #3	There aisles between displays of merchandise that do not provide the clear with of 36” for the path of travel in the center east area if the west warehouse.
Staff Note: Violation #4	The required egress lighting is not provided for all egress paths when the building is occupied. The egress lighting is not working in the west warehouse.
Staff Note: Violation #5	Exit doors shall be unlocked to allow occupants to exit the west warehouse when the building is occupied.

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

Brook M. Pittinger
Acting Executive
Director

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09/29/2017

Owner/Occupant: Harvey M. Dupree & Ann N Dupree Building Name: BRUNSWICK - A & H Variety and Flea Market Address: 456 - 554 Piney Pond Rd. Brodnax, 23920	File Number: C-1270-001 Occ/Use Code: OTHER

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

605.5	Extension cords. Extension cords and flexible cords shall not be a substitute for permanent wiring. Extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings or floors, or under doors or floor coverings, nor shall such cords be subject to environmental damage or physical impact. Extension cords shall be used only with portable appliances.	10/29/2017	Previous Violation
Staff Note: Violation #6	There is an extension cord that is plugged into a light bulb adapter that extend above the ceiling in the north west area and in the north area of the west warehouse.		
Staff Note: Violation #7	There is an extension cord that is used a permanent wire for ceiling light fixture in the front area at the main entrance.		
Saff Note: Violation #8	There is a light fixture that is hanging from the ceiling that is plugged into an extension cord that extends above the ceiling in the north east side of the west warehouse.		
	Previous violations of using extension cords that was observed during the inspection conducted on 8/29/17 could not be verified in the Main Street warehouse as corrected due to doorway has been barricaded with folding doors and a wooden bar that does not allow access into the Main Street warehouse.		

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

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09/29/2017

Owner/Occupant: Harvey M. Dupree & Ann N Dupree Building Name: BRUNSWICK - A & H Variety and Flea Market Address: 456 - 554 Piney Pond Rd. Brodnax, 23920	File Number: C-1270-001 Occ/Use Code: OTHER

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

605.6	Unapproved conditions. Open junction boxes and open-wiring splices shall be prohibited. Approved covers shall be provided for all switch and electrical outlet boxes.	10/29/2017	Previous Violation
Staff Note: Violation #9	There are florescent light fixtures that are suspended from the ceiling grid that the cover is missing and there is open wiring in the middle of the west warehouse.		
Staff Note: Violation #10	There are open junction boxes that contain wire splices that are not closed above the ceiling grid in the center of the west warehouse.		
Staff Note: Violation #11	There is a splice in non-metallic wiring that is not in a junction box and spliced together and covered with electrical tape in the southern area of the west warehouse.		
Staff Note: Violation #12	There is an electrical panel cover that is missing and there is exposed wiring, buss bars, and breakers that are hanging from wires in the room that is located near the doorway to the Main Street warehouse in the west warehouse.		
	Previous violations of open wiring splices that are not in junction boxes, open junction boxes and missing electrical panel cover that was observed during the inspection conducted on 8/29/17 could not be verified in the Main		

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

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Date of Inspection:

09/29/2017

Owner/Occupant: Harvey M. Dupree & Ann N Dupree Building Name: BRUNSWICK - A & H Variety and Flea Market Address: 456 - 554 Piney Pond Rd. Brodnax, 23920	File Number: C-1270-001 Occ/Use Code: OTHER

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

	Street warehouse as corrected due to doorway has been barricaded with folding doors and a wooden bar that does not allow access into the Main Street warehouse.		
605.1	Abatement of electrical hazards. Identified electrical hazards shall be abated. Identified hazardous electrical conditions in permanent wiring shall be brought to the attention of the responsible code official. Electrical wiring, devices, appliances and other equipment that is modified or damaged and constitutes an electrical shock or fire hazard shall not be used.	10/29/2017	Previous Violation
Staff Note: Violation #13	There is non-metallic electrical cable that is located above the ceiling grid that is not securely supported to the structure. Previous violations conduit and electrical cabling not being securely supported from the structure that was observed during the inspection conducted on 8/29/17 could not be verified in the Main Street warehouse as corrected due to doorway has been barricaded with folding doors and a wooden bar that does not allow access into the Main Street warehouse.		

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

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Acting Executive
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Date of Inspection:

09/29/2017

Owner/Occupant: Harvey M. Dupree & Ann N Dupree Building Name: BRUNSWICK - A & H Variety and Flea Market Address: 456 - 554 Piney Pond Rd. Brodnax, 23920	File Number: C-1270-001 Occ/Use Code: OTHER

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

1030.4	Exit signs. Exit signs shall be installed and maintained in accordance with Section 1011. Decorations, furnishings, equipment or adjacent signage that impairs the visibility of exit signs, creates confusion or prevents identification of the exit shall not be allowed.	10/29/2017	Previous Violation
Staff Note: Violation #14	There is an exit sign that is not illuminated above the exit door leads to the porch in the west warehouse. The west warehouse shall not be occupied until the egress lighting is operational.		

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.

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09/29/2017

Owner/Occupant: Harvey M. Dupree & Ann N Dupree Building Name: BRUNSWICK - A & H Variety and Flea Market Address: 456 - 554 Piney Pond Rd. Brodnax, 23920	File Number: C-1270-001 Occ/Use Code: OTHER

The following violation(s) of the Virginia Statewide Fire Prevention Code were observed during an inspection of the captioned property. You are responsible for correcting these violation(s) within the specified time limit.

605.3	Working space and clearance. A working space of not less than 30 inches in width, 36 inches in depth and 78 inches in height shall be provided in front of electrical service equipment. Where the electrical service equipment is wider than 30 inches, the working space shall not be less than the width of the equipment. No storage of any materials will be located within the designated working space. (2 exceptions)	10/29/2017
Staff Note: Violation #15	There is storage located in the required working space in front of the main electrical panel in the room near the entrance to the Main Street warehouse in the west warehouse.	

Failure to correct violations within the time limit specified in this notice may result in appropriate legal proceedings. An owner or occupant may appeal a decision of the State Fire Marshal to the State Building Code Technical Review Board within fourteen (14) days from receipt of this notice.