

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, February 15, 2019 - 9:00am

Chesterfield County Government Center
9800 Government Center Parkway, Chesterfield, Virginia

- I. Roll Call **(TAB 1)**
- II. Approval of January 11, 2019 Minutes **(TAB 2)**
- III. Approval of Final Order **(TAB 3)**
 - In Re: Preliminary Hearing for Potential Conflict of Interest Issue
 - Appeal of Kristie L. Sours Atwood
Appeal No 18-08
 - Appeal of Kristie L. Sours Atwood
Appeal No 18-12
 - Appeal of Buracker Construction
Appeal No 18-13
- IV. Public Comment
- V. Appeal Hearing **(TAB 4)**
 - In Re: Appeal of Karen Lindsay
Appeal No 18-07
- VI. Appeal Hearing **(TAB 5)**
 - In Re: Appeal of AMcL, LLC
Appeal No. 18-14
- VII. Appeal Hearing **(TAB 6)**
 - In Re: Appeal of Rappahannock County High School
Appeal No. 18-16
- VIII. Secretary's Report
 - a. Briefing cases for the March meeting
 - b. Update on Board Retreat

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STATE BUILDING CODE TECHNICAL REVIEW BOARD

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

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

Vince Butler
(Virginia Home Builders Association)

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

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

Christina Jackson
(Commonwealth at large)

Joseph A. Kessler, III
(Associated General Contractors)

Eric Mays
(Virginia Building and Code Officials Association)

E.G. “Rudy” Middleton
(Electrical Contractor)

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

Patricia S. O’Bannon
(Commonwealth at large)

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

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

Aaron Zdinak, PE
(Virginia Society of Professional Engineers)

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**STATE BUILDING CODE TECHNICAL REVIEW BOARD
MEETING MINUTES
January 11, 2019
Chesterfield, Virginia**

Members Present

Mr. James R. Dawson, Chairman
Mr. W. Shaun Pharr, Esq., Vice-Chairman
Mr. Vince Butler
Ms. Christina Jackson
Mr. Joseph Kessler
Ms. Joanne Monday
Mr. J. Kenneth Payne, Jr.
Mr. Richard C. Witt
Mr. Aaron Zdinak, PE

Members Absent

Mr. Daniel Crigler
Mr. Alan D. Givens
Mr. Eric Mays, PE
Mr. E. G. Middleton, III
Ms. Patricia S. O'Bannon

Call to Order The meeting of the State Building Code Technical Review Board ("Review Board") was called to order at approximately 9:00 a.m. by Secretary Travis Luter.

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

Approval of Minutes The draft minutes of the November 16, 2018 meeting in the Review Board members' agenda package were considered. Ms. Monday moved to approve the minutes with an editorial change in the spelling of the word "*Recused*" in the third line of the Approval of Minutes section on page five, an editorial change in spelling of the word "*but*" in the fifth line of the last paragraph of page nine, and the addition of the word "to" in the first line of the last paragraph of page thirteen of the agenda package. The motion was seconded by Mr. Payne and passed with Mr. Butler abstaining.

Final Orders Appeal of Anthony Grant Jr.
Appeal No. 18-10:

After review and consideration of the final order presented in the Review Board members' agenda package, Ms. Monday moved to approve the final order with an editorial change in spelling of the word "*but*" in the fourth sentence of the last paragraph of page six of the final order, shown on page 29 of the agenda package. Ms. Jackson seconded the motion and it passed with Mr. Butler abstaining.

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Appeal of Harvey Dupree (A...H Variety)
Appeal No. 18-06:

After consideration of the final order presented in the Review Board members' agenda package, Mr. Witt moved to approve the final order with an editorial change in spelling of the word "out" in the second sentence of the third paragraph of page three of the final order, shown on page 37 of the agenda package. Ms. Jackson seconded the motion and it passed with Messrs. Butler and Zdinak abstaining.

Appeal of Harvey Dupree (A...H Variety)
Appeal No. 18-11:

After consideration of the final order presented in the Review Board members' agenda package, Mr. Witt moved to approve the final order with an editorial change replacing the word "use" with the word "occupancy" to align with Section 103.3 (Change of occupancy) in the following locations:

- last sentence of the last paragraph of page two of the final order, shown on page 47 of the agenda package
- first sentence of the second paragraph of page three of the final order, shown on page 49 of the agenda package
- second sentence of the last paragraph of page three of the final order, shown on page 49 of the agenda package
- fourth sentence of the second paragraph of page four of the final order, shown on page 51 of the agenda package
- fourth sentence of the third paragraph of the fourth page of the final order shown on page 51 of the agenda package

Ms. Jackson seconded the motion and it passed with Messrs. Butler and Zdinak abstaining.

Public Comment

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

New Business

Preliminary Hearing (To Discuss the Potential Conflict of Interest Issue)

Appeal of Kristie L. Sours Atwood; Appeal No. 18-08:
Appeal of Kristie L. Sours Atwood; Appeal No. 18-12:
Appeal of Buracker Construction; Appeal No. 18-13:

A hearing convened with Chairman Dawson serving as the presiding officer. Each of the three appeals listed above, associated with the property owned by Kristie L. Sours Atwood located at 1255 Pilgrim

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Way in Warren County, potentially have a conflict of interest issue related to the local appeals board hearings.

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

David Beahm
David Buracker
Kristie Atwood
Victor Atwood Jr.

Also present was:

Dan Whitten, Esq., legal counsel for Warren County
T. Joel Francis, Esq., legal counsel for David Buracker

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

Decision: Preliminary Hearing (To Discuss Conflict of Interest Issues)

Appeal of Kristie L. Sours Atwood; Appeal No. 18-08:

Appeal of Kristie L. Sours Atwood; Appeal No. 18-12:

Appeal of Buracker Construction; Appeal No. 18-13:

After deliberations, Mr. Kessler moved to remand the conflict of interest issue(s) back to the local board of appeals with a directive that the local board of appeals seek the advice of the Commonwealth's Attorney related to each local board member and that the Review Board move forward to hear the three cases before it de novo. The motion did not receive a second.

Mr. Witt, in accordance with Section 119.4 of the USBC, moved to remand all three appeals cases back to the local board of appeals for determination for each local board member whether a conflict of interest exist and that the local board seek counsel from either the COIA Council or the Commonwealth's Attorney. The motion was seconded by Mr. Kessler. Having misunderstood the motion Mr. Kessler withdrew his second. The motion did not receive a second.

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After further deliberation Mr. Witt moved to remand all three appeals cases back to the local board of appeals for determination by the COIA Council or the Commonwealth's Attorney of whether a conflict of interest exist, for each local board member, in each of the three cases. If, in any case a conflict of interest is determined to have existed, then that case(s) shall be re-heard by the local board of appeals. If, in any case no conflict of interest is determined to have existed, then that case(s) shall come directly back to the Review Board as currently submitted. The motion was seconded by Ms. Jackson. The motion passed with Ms. Monday and Mr. Zdinak voting in opposition.

Secretary's Report

Mr. Luter provided the Review Board with an update on the Augusta County Public Schools Appeal No. 18-04. In accordance with the Final Order, the SFMO and ACPS reached an agreement on the remaining items prior to the December 31, 2018 deadline.

Mr. Luter reminded the Review Board of the Board Retreat, scheduled for March 14, 2019. He updated the Board on the presentations to be provided which include a discussion by Attorney General representatives Heather Lockerman and Justin Bell, an overview of the code change process by Jeff Brown and/or Richard Potts, and a thorough discussion of the newly drafted Board policies. He also informed the Board that additional information would be forthcoming. During this discussion the Review Board indicated they wanted to have the February meeting as well as the Retreat and March meeting held at the Chesterfield Government Center, Community Development Building, multipurpose room. Mr. Luter will coordinate with Mr. Witt to secure the meeting space as desired.

Mr. Luter provided the Review Board with a basic overview of the three cases coming before them in the February meeting. Due to the current case load the Review Board agreed to start the February meeting at 9:00 a.m.

Mr. Luter provided a brief summation of the pending cases currently being processed by staff. The Board requested an email update on all pending cases. Mr. Luter acknowledged and indicated he would provide the update next week.

Adjournment

There being no further business, the meeting was adjourned by proper motion at approximately 12:00 p.m.

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Approved: February 15, 2019

Chairman, State Building Code Technical Review Board

Secretary, State Building Code Technical Review Board

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD
(Preliminary Hearing For Potential Conflict of Interest by the Local Appeals Board)

IN RE: Appeal of Kristie L. Sours Atwood
 Appeal No. 18-08
 Appeal of Kristie L. Sours Atwood
 Appeal No. 18-12
 Appeal of Buracker Construction
 Appeal No. 18-13

DECISION OF THE REVIEW BOARD

I. Procedural Background

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

II. Case History

The three referenced cases presented to the Review Board for consideration at the January 11, 2019 for Kristie L. Sours Atwood (Atwood) and Buracker Construction (Buracker) have not been merged and remain independent of each other; however, the three cases originate from the same nexus of facts and all have similar questions related to a potential conflict of interest pursuant to the Conflicts of Interest Act (COIA) and the 2012 Virginia Construction Code Section 119.4 stemming from the County of Warren Local Board of Building Code Appeals (local appeals board) hearings.

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A. The Inspection of the Dwelling

In July of 2016, the County of Warren Department of Building Inspections (County building official), the agency responsible for the enforcement of Part 1 of the 2009 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), issued a final inspection and a subsequent Certificate of Occupancy to Buracker, a licensed Class A contractor, for a single-family dwelling located at 1255 Pilgrims Way owned by Atwood.

Atwood believed there were multiple issues with her new home; therefore, in September of 2017, Atwood hired David Rushton of ABLE Building Inspection, Inc. (ABLE) to perform a home inspection. ABLE issued a new construction defect inspection report in December of 2017 identifying 126 defective items of which sixty eight (68) were identified as potential code violations. In March of 2018, at the request of Atwood, the County building official performed a re-inspection of the property subsequently issuing a Notice of Violation (NOV) to Buracker citing five (5) violations.

B. The Local Appeals Hearings

In May of 2018, Atwood filed an appeal to the local appeals board asking the local board to review the remaining sixty three (63) potential code violations, listed in the ABLE report, not cited in the March 30, 2018 NOV. The local appeals board heard Atwood's appeal and identified 12 additional violations from the ABLE report. Atwood further appealed to the Review Board the remaining fifty one (51) potential violations listed in the ABLE report that were not cited by the county building official.

Subsequent to the June 7, 2018 decision of the local appeals board, the County building official issued a second NOV that was dated June 13, 2018 citing the 12 violations identified in

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the local appeals board decision. On June 28, 2018, Buracker filed an appeal to the local appeals board of the 12 violations cited in the June 13, 2018 NOV.¹ The local appeals board has six (6) total members. Of that 6, at least two (2) members worked as a contractor on Atwood's dwelling that is the subject of this appeal. One of the members, Buracker recused himself from the hearings. The other member who also was a contractor on the Atwood dwelling participated in the hearings and was the chair of the board during one of the hearings.

The local appeals board heard the appeal on July 26, 2018 whereby the local appeals board overturned six of the violations and upheld the other six violations. On August 10, 2018, Atwood further appealed the six cited violations overturned by the local appeals board to the Review Board. On August 17, 2018, Buracker further appealed to the Review Board the six cited violations upheld by the local appeals board.²

III. Findings of the Review Board

After hearing testimony from Atwood, Buracker, and David Beahm, County building official, the Review Board members find that there is enough evidence of a potential conflict of interest issue. The Board wants the issue sufficiently addressed prior to the Board hearing the merits of the case(s). Section 119.4 of the USBC states that no local appeals board member "shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia)." This language is clear – local appeals board members must not participate in hearings when they have a conflict. If one of the local appeals board members has a conflict as envisioned by § 119.4 of the USBC then it potentially taints all of the proceedings in which that member participates.

¹ This was the second of the two hearings before the local appeals board.

² At the August 17, 2018 local appeals board hearing Atwood asserted that a conflict of interest existed and objected to the members involved participating in the hearing.

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IV. Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board members order all three appeals to be, and hereby by are, remanded in part to the local appeals board to address the potential conflict of interest issue. All members of the local appeals board who participated in hearings regarding this case must seek a written opinion, from the Warren County Commonwealth Attorney or a formal opinion from the Virginia Conflict of Interest and Ethics Advisory Council (COIA Council), whether their participation in the proceedings thus far constituted a violation of the State and Local Government Conflict of Interests Act (COIA).

In addition, the Review Board members orders that for any of the three appeals (Appeal Nos. 18-08, 18-12, and 18-13) where local appeals board members are advised by either the Commonwealth Attorney or the COIA Council that they have conflict of interest or might have already committed a COIA violation, the local appeals board is to re-hear the case on its merits after the members with conflicts recuse themselves in accordance with the USBC and COIA.

The Review Board members further order that any of the three appeals where no local appeals board members have been advised by either the Commonwealth Attorney or the COIA Council that they do not have a conflict of interest issue or have not violated COIA to be, and hereby are, to be brought back to the Review Board, as presented in the January 11, 2019 agenda package, for a hearing on its merits at the earliest the Review Board hearing schedule allows.

Chairman, State Building Code Technical Review Board

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Date entered: ____February 15, 2019____

Certification

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

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Karen Lindsey
Appeal No. 18-07

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VIRGINIA:

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

IN RE: Karen Lindsey
Appeal No. 18-07

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. On January 25, 2018, the home owned by William and Marjorie Lindsey located at 2445 Strawberry Lane in the City of Chesapeake caught fire. The occupants of the home were displaced due to the extensive damage to the home.

2. On January 29, 2018, the City of Chesapeake Development and Permits Department (City), in enforcement of the Virginia Property Maintenance (VMC), performed an inspection of the property.

3. On February 27, 2018 Karen Lindsey (Lindsey) was certified as the Executor of the estate for the property owned by William and Marjorie Lindsey whom are deceased.

4. In early March of 2018 copies of the Notice of Unsafe Structure (Demolition), Demolition Authorization Form, City of Chesapeake Board of Building Code Appeals (local appeals board) application, Notice of Violation (NOV), Public Notice, and Building Inspection Report for Unsafe Structure dated March 7, 2018 were stapled to the garage at the structure. Lindsey removed them from the structure and contacted the City for clarification of the documents.

5. On March 29, 2018 Lindsey received copies of the Notice of Unsafe Structure (Demolition), Demolition Authorization Form, local appeals board application, Notice of Violation, Public Notice, and Amended Building Inspection Report for Unsafe Structure dated March 26, 2018 via USPS certified mail . The same documents were posted on the structure by the City Sheriff's Department on March 30, 2018.

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5. Lindsey filed an appeal to the local appeals board on April 10, 2018.

6. The local appeals board conducted the hearing on May 16, 2018. The local appeals board upheld the NOV issued by the Property Maintenance Official. In addition to upholding the NOV the local appeals board gave the owner/executor 30 days from the date of the hearing to obtain an engineer's report and contractor's agreement; 60 days to acquire the needed permits and 180 days to complete all repairs, request the required inspections and obtain a new Certificate of Occupancy; and 270 to obtain the new CO or have the property demolished. The local appeals board further stated that if the deadlines provided were not adhered to the City would demolish the structure without further notice. Karen Lindsey agrees with the cited violations; however, she finds the timeline unattainable and asks for an extension of the timeframes provided by the local appeals board.

10. Lindsey received a copy of the local appeals board decision on May 25, 2018. Lindsey filed an application for appeal to the Review Board on June 15, 2018.

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

Suggested Issue for Resolution by the Review Board

1. Whether or not to provide the requisite extension to the timeframe provided by the local appeals board to 120 days, from the decision of the Review Board, to review the documentation sent to Lindsey by the City and local appeals board.

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2. Whether or not to provide the requisite extension to the timeframe provided by the local appeals board to 365 days, from the decision of the Review Board, to complete reconstruction of the home and obtain a new Certificate of Occupancy.

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Basic Documents

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Development and Permits
Code Compliance Division
306 Cedar Road
P.O. Box 15225
Chesapeake, Virginia 23328-5225
(757) 382-6378
Fax (757) 382-6793

NOTICE OF UNSAFE STRUCTURE
(DEMOLITION)

March 7, 2018

CERTIFIED: 7017 0190 0000 9661 5431

William J. Lindsey
Marjorie A. Lindsey
2445 Strawberry Lane
Chesapeake, VA 23324

Reference: Demolition of 2445 Strawberry Lane
Tax Parcel 1410000005030

Dear Property Owner(s):

Pursuant to the Virginia Uniform Statewide Building Code (USBC), Part III, Section 105 and Section 14-35 of the Chesapeake City Code, the structure located at 2445 Strawberry Lane and described as 2 Sub Of Strawberry Lane Reuse Parcels Sec One, has been declared unsafe and a public nuisance by the Code Official.

The defects which make this building unsafe and a public nuisance are listed on the enclosed inspection report. There may be concealed damage not included in the report. Any work performed to correct these defects must meet the minimum standards of the Virginia Uniform Statewide Building Code and the Chesapeake Zoning Ordinance. Plans must be submitted within thirty (30) days for approval prior to the issuance of a building permit or any work being done on the building.

Part III, Section 105.4 of the USBC requires that you declare immediately upon receipt, to the Code Official, acceptance or rejection of the terms of this notice.

Demolition
2445 Strawberry Lane
Page Two
March 7, 2018

You are herewith notified that repair and correction of these defects must be started and a fixed completion date agreed upon, or the unsafe building must be demolished within thirty (30) days from the date of this notice.

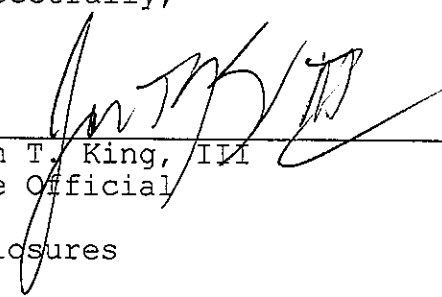
If demolition of the building is contemplated, a demolition permit must be issued before the work is commenced. It shall remain the property owner's responsibility to pay any fees for discontinuance of utility services (water and sewer).

Failure to comply with the above within the stated time shall result in the Code Official having the structure demolished. Any personal items remaining on the premises shall be removed and disposed of. Any expense incurred by the City of Chesapeake in having the unsafe building demolished and the debris removed from the premises shall be charged to the owner and collected in the manner provided by law. The cost shall include a \$150.00 administration fee and the cost of advertising notices as required by Section 14-35 of the Chesapeake City Code.

The owner, agent or person in control of the property has the right to appeal the decision of the Code Official. Should you desire to appeal, execute the furnished appeal form and return same to this office within fourteen (14) days of the date of this notice. A fee of \$25.00 must accompany the application. You will be notified of the time, date and place of the meeting of the Board of Appeals.

Should you agree that demolition is the proper solution and desire the City to have the property cleared at your expense, you may minimize the expense by completing the enclosed work authorization form. It must be notarized and returned promptly to this office.

Respectfully,



John T. King, III
Code Official

Enclosures

DEMOLITION AUTHORIZATION FORM

TO: Code Official
Department of Development and Permits
P.O. Box 15225
Chesapeake, Virginia 23328

Property Identification Number: 1410000005030

Sir:

As the person responsible for the structure located at 2445 Strawberry Lane, I hereby authorize the City to have the building demolished and all debris removed from the premises.

It is understood that expenses incurred by the City in conjunction with this request shall be charged to the landowner and collected in the manner provided by law.

Signature

Current Mailing Address

Phone Number

Duly subscribed to before me this _____ day of _____, 2018.

Notary Public

My Commission Expires: _____.

Department of Development and Permits
Attention: John T. King, III
Post Office Box 15225
Chesapeake, Virginia 23328

Reference: 2445 Strawberry Lane - 1410000005030

Dear Sir:

I herewith appeal the decision of the Code Official on the above-referenced property. The grounds for appeal are:

_____ The Property Maintenance Code has been misapplied to my property. Please explain below.

_____ The Code Official has erroneously refused to grant a modification to the provisions of the Property Maintenance Code covering the manner of maintenance or use of the materials to be used in the maintenance or repair of that building or structure. Please explain below.

Additional Comments/Explanations:

I, or my agent, will appear before the Board of Building Code Appeals when notified of the time and place. Enclosed is my application fee of \$25.00 payable to the City of Chesapeake, Virginia.

Owner

Other

Signature

Date

Address

Contact Phone Number

Notice of Violation

Development and Permits
Code Compliance Division
PO Box 15225
Chesapeake, VA 23328
Fax: 757-382-6793

Parcel # Property Address

Occupancy Type Tenant Name

Owner Name/Address

Type of Inspection Date of Inspection

Violation(s) must be corrected within Name of Inspector

NOTE MAKE ALL NECESSARY REPAIRS CHECKED BELOW - EXPLANATION BELOW CHECKLIST

EXTERIOR	INTERIOR	PLUMBING/FIXTURES	EQUIPMENT
<input type="checkbox"/> 301.3 Vacant Structure	<input type="checkbox"/> 305.1 General	<input type="checkbox"/> 502 Required Facilities	<input type="checkbox"/> 602 Heating & Cooling Supply
<input type="checkbox"/> 302 Exterior Areas	<input type="checkbox"/> 305.2 Structural members	<input type="checkbox"/> 502.1 Water closet	<input type="checkbox"/> 603.1 Mechanical Appliances
<input type="checkbox"/> 302.5 Rodent Harborage	<input type="checkbox"/> 305.3 Interior surfaces	<input type="checkbox"/> 502.1 Bathtub/shower	<input type="checkbox"/> 603.2 Chimney/Vent Connection
<input type="checkbox"/> 302.7 Accessory Structures	<input type="checkbox"/> 305.4 Stairs/walking surfaces	<input type="checkbox"/> 502.1 Lavatory	<input type="checkbox"/> 603.3 Clearances
<input type="checkbox"/> 303 Pools/Enclosures	<input type="checkbox"/> 305.5 Handrails/guardrails	<input type="checkbox"/> 502.1 Kitchen sink	<input type="checkbox"/> 603.4 Controls
<input type="checkbox"/> 304 General Exterior	<input type="checkbox"/> 305.6 Interior Doors	<input type="checkbox"/> 503 Toilet Rooms	<input type="checkbox"/> 603.5 Combustion Air
<input type="checkbox"/> 304.2 Protective Treatment	<input type="checkbox"/> 305.7 Carbon Monoxide Alarms	<input type="checkbox"/> 504.1 Fixture maintenance	
<input type="checkbox"/> 62-2 Weeds/Debris	<input type="checkbox"/> 307.1 Handrails/Guardrails	<input type="checkbox"/> 505.1 Fixture connections	<input type="checkbox"/> ELECTRICAL
<input type="checkbox"/> 304.3 Street Numbers	<input type="checkbox"/> 308.1 Interior Rubbish	<input type="checkbox"/> 505.2 Contamination	
<input type="checkbox"/> 304.4 Structural Members	<input type="checkbox"/> 309 Pest Elimination	<input type="checkbox"/> 505.3 Supply	<input type="checkbox"/> 604.1 Facilities Required
<input type="checkbox"/> 304.5 Foundation Walls	<input type="checkbox"/> 310 Lead Based Paint	<input type="checkbox"/> 505.4 Water heating	<input type="checkbox"/> 604.3 System Hazards
<input type="checkbox"/> 304.6 Exterior Walls	<input type="checkbox"/> 402 Light	<input type="checkbox"/> 506.1 Sewer Connection	<input type="checkbox"/> 605.1 Installation
<input type="checkbox"/> 304.7 Roofs/Drainage	<input type="checkbox"/> 403 Ventilation	<input type="checkbox"/> 506.2 Sewage maintenance	<input type="checkbox"/> 605.2 Receptacles
<input type="checkbox"/> 304.10 Stairs/decks/balconies	<input type="checkbox"/> 404 Occupancy Limitations	<input type="checkbox"/> 507.1 Storm Drainage	<input type="checkbox"/> 605.3 Lighting Fixtures
<input type="checkbox"/> 304.13 Window/door frame	<input type="checkbox"/> 702 Means of egress		<input type="checkbox"/> 607.1 Duct System
<input type="checkbox"/> 304.13.1 Glazing	<input type="checkbox"/> 702.3 Locked doors		<input type="checkbox"/> 607.4 Cooling Supply
<input type="checkbox"/> 304.13.2 Openable window	<input type="checkbox"/> 704 Smoke detector		<input type="checkbox"/> 606 Elevators
<input type="checkbox"/> 304.14 Insect Screens			
<input type="checkbox"/> 304.15 Doors			
<input type="checkbox"/> 46.131.1 Graffiti			
<input checked="" type="checkbox"/> 105 Unsafe/Unfit Structure			
<input type="checkbox"/> 14-4 Dangerous Building			

Code Explanation(s):

Unsafe Structure - Accessory structure shed/garage has been determined to be an unsafe structure and the condition constitutes such a hazard that it should be razed or removed. Unsafe determination prohibits its use for habitation until repaired with building permit requiring structural engineer plans for repair.

*Demolish unsafe structure within 30 days of the date of written notice with permit or provide structural engineers report stating that the structure is repairable for further review to obtain required permits within 30 days of this written notice.

Notice: In accordance with City Code section 14-86 and Chapter 1, Part III of the Virginia Uniform Statewide Building Code, any person aggrieved by the City of Chesapeake's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the Local Board of Building Code Appeals. The application for appeal must be made within fourteen (14) calendar days of receipt of the notice. (Exception- Appeals for Dangerous Buildings must be made to the City Manager). An application is available on the City's website at <http://www.cityofchesapeake.net/government/City-Departments/Departments/Department-of-Development-and-Permits/forms.htm>

PUBLIC NOTICE

Please note that Section 38-8 of the Chesapeake City Code requires a rodent inspection prior to issuance of demolition permits.

This is a result of an ordinance adopted to abate rat infestation, which states that a building shall be free of rats or similar rodents prior to demolition. Should an inspection reveal the presence of rats/rodents, the site must be treated as required by the Department of Development & Permits. When it is determined the building is in compliance, the Department of Development & Permits will approve the issuance of a demolition permit.

For additional information concerning this amendment, please contact the Code Compliance Section of the Department of Development & Permits by phoning (757) 382-6378.

Development and Permits
Code Compliance Division
306 Cedar Road
P.O. Box 15225
Chesapeake, Virginia 23328-5225
(757) 382-6378
Fax (757) 382-6793

NOTICE OF UNSAFE STRUCTURE
(DEMOLITION)

March 7, 2018

CERTIFIED: 7017 0190 0000 9661 5462

Bank of America f/k/a National Bank of Delaware, N.A.
401 N. Tyron Street
Charlotte, NC 28255

Reference: Demolition of 2445 Strawberry Lane
Tax Parcel 1410000005030
RE: Bank of America v. Ms. William J. Lindsey

Dear Judgement Holder(s):

Pursuant to the Virginia Uniform Statewide Building Code (USBC), Part III, Section 105 and Section 14-35 of the Chesapeake City Code, the structure located at 2445 Strawberry Lane and described as 2 Sub Of Strawberry Lane Reuse Parcels Sec One, has been declared unsafe and a public nuisance by the Code Official.

The defects which make this building unsafe and a public nuisance are listed on the enclosed inspection report. There may be concealed damage not included in the report. Any work performed to correct these defects must meet the minimum standards of the Virginia Uniform Statewide Building Code and the Chesapeake Zoning Ordinance. Plans must be submitted within thirty (30) days for approval prior to the issuance of a building permit or any work being done on the building.

Part III, Section 105.4 of the USBC requires that you declare immediately upon receipt, to the Code Official, acceptance or rejection of the terms of this notice.

Demolition
2445 Strawberry Lane
Page Two
March 7, 2018

You are herewith notified that repair and correction of these defects must be started and a fixed completion date agreed upon, or the unsafe building must be demolished within thirty (30) days from the date of this notice.

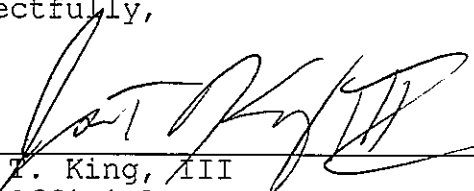
If demolition of the building is contemplated, a demolition permit must be issued before the work is commenced. It shall remain the property owner's responsibility to pay any fees for discontinuance of utility services (water and sewer).

Failure to comply with the above within the stated time shall result in the Code Official having the structure demolished. Any personal items remaining on the premises shall be removed and disposed of. Any expense incurred by the City of Chesapeake in having the unsafe building demolished and the debris removed from the premises shall be charged to the owner and collected in the manner provided by law. The cost shall include a \$150.00 administration fee and the cost of advertising notices as required by Section 14-35 of the Chesapeake City Code.

The owner, agent or person in control of the property has the right to appeal the decision of the Code Official. Should you desire to appeal, execute the furnished appeal form and return same to this office within fourteen (14) days of the date of this notice. A fee of \$25.00 must accompany the application. You will be notified of the time, date and place of the meeting of the Board of Appeals.

Should you agree that demolition is the proper solution and desire the City to have the property cleared at your expense, you may minimize the expense by completing the enclosed work authorization form. It must be notarized and returned promptly to this office.

Respectfully,



John T. King, III
Code Official

Enclosures

DEMOLITION AUTHORIZATION FORM

TO: Code Official
Department of Development and Permits
P.O. Box 15225
Chesapeake, Virginia 23328

Property Identification Number: 1410000005030

Sir:

As the person responsible for the structure located at 2445 Strawberry Lane, I hereby authorize the City to have the building demolished and all debris removed from the premises.

It is understood that expenses incurred by the City in conjunction with this request shall be charged to the landowner and collected in the manner provided by law.

Signature

Current Mailing Address

Phone Number

Duly subscribed to before me this _____ day of _____, 2018.

Notary Public

My Commission Expires: _____.

Department of Development and Permits
Attention: John T. King, III
Post Office Box 15225
Chesapeake, Virginia 23328

Reference: 2445 Strawberry Lane - 1410000005030

Dear Sir:

I herewith appeal the decision of the Code Official on the above-referenced property. The grounds for appeal are:

_____ The Property Maintenance Code has been misapplied to my property. Please explain below.

_____ The Code Official has erroneously refused to grant a modification to the provisions of the Property Maintenance Code covering the manner of maintenance or use of the materials to be used in the maintenance or repair of that building or structure. Please explain below.

Additional Comments/Explanations:

I, or my agent, will appear before the Board of Building Code Appeals when notified of the time and place. Enclosed is my application fee of \$25.00 payable to the City of Chesapeake, Virginia.

Owner

Other

Signature

Date

Address

Contact Phone Number

Notice of Violation

Development and Permits
Code Compliance Division
PO Box 15225
Chesapeake, VA 23328
Fax: 757-382-6793

Parcel # Property Address
 Occupancy Type Tenant Name
 Owner Name/Address

Type of Inspection Date of Inspection
 Violation(s) must be corrected within Name of Inspector

NOTE MAKE ALL NECESSARY REPAIRS CHECKED BELOW - EXPLANATION BELOW CHECKLIST

EXTERIOR	INTERIOR	PLUMBING/FIXTURES	EQUIPMENT
<input type="checkbox"/> 301.3 Vacant Structure	<input type="checkbox"/> 305.1 General	<input type="checkbox"/> 502 Required Facilities	<input type="checkbox"/> 602 Heating & Cooling Supply
<input type="checkbox"/> 302 Exterior Areas	<input type="checkbox"/> 305.2 Structural members	<input type="checkbox"/> 502.1 Water closet	<input type="checkbox"/> 603.1 Mechanical Appliances
<input type="checkbox"/> 302.5 Rodent Harborage	<input type="checkbox"/> 305.3 Interior surfaces	<input type="checkbox"/> 502.1 Bathtub/shower	<input type="checkbox"/> 603.2 Chimney/Vent Connection
<input type="checkbox"/> 302.7 Accessory Structures	<input type="checkbox"/> 305.4 Stairs/walking surfaces	<input type="checkbox"/> 502.1 Lavatory	<input type="checkbox"/> 603.3 Clearances
<input type="checkbox"/> 303 Pools/Enclosures	<input type="checkbox"/> 305.5 Handrails/guardrails	<input type="checkbox"/> 502.1 Kitchen sink	<input type="checkbox"/> 603.4 Controls
<input type="checkbox"/> 304 General Exterior	<input type="checkbox"/> 305.6 Interior Doors	<input type="checkbox"/> 503 Toilet Rooms	<input type="checkbox"/> 603.5 Combustion Air
<input type="checkbox"/> 304.2 Protective Treatment	<input type="checkbox"/> 305.7 Carbon Monoxide Alarms	<input type="checkbox"/> 504.1 Fixture maintenance	
<input type="checkbox"/> 62-2 Weeds/Debris	<input type="checkbox"/> 307.1 Handrails/Guardrails	<input type="checkbox"/> 505.1 Fixture connections	<input type="checkbox"/> ELECTRICAL
<input type="checkbox"/> 304.3 Street Numbers	<input type="checkbox"/> 308.1 Interior Rubbish	<input type="checkbox"/> 505.2 Contamination	<input type="checkbox"/> 604.1 Facilities Required
<input type="checkbox"/> 304.4 Structural Members	<input type="checkbox"/> 309 Pest Elimination	<input type="checkbox"/> 505.3 Supply	<input type="checkbox"/> 604.3 System Hazards
<input type="checkbox"/> 304.5 Foundation Walls	<input type="checkbox"/> 310 Lead Based Paint	<input type="checkbox"/> 505.4 Water heating	<input type="checkbox"/> 605.1 Installation
<input type="checkbox"/> 304.6 Exterior Walls	<input type="checkbox"/> 402 Light	<input type="checkbox"/> 506.1 Sewer Connection	<input type="checkbox"/> 605.2 Receptacles
<input type="checkbox"/> 304.7 Roofs/Drainage	<input type="checkbox"/> 403 Ventilation	<input type="checkbox"/> 506.2 Sewage maintenance	<input type="checkbox"/> 605.3 Lighting Fixtures
<input type="checkbox"/> 304.10 Stairs/decks/balconies	<input type="checkbox"/> 404 Occupancy Limitations	<input type="checkbox"/> 507.1 Storm Drainage	<input type="checkbox"/> 607.1 Duct System
<input type="checkbox"/> 304.13 Window/door frame	<input type="checkbox"/> 702 Means of egress		<input type="checkbox"/> 607.4 Cooling Supply
<input type="checkbox"/> 304.13.1 Glazing	<input type="checkbox"/> 702.3 Locked doors		<input type="checkbox"/> 606 Elevators
<input type="checkbox"/> 304.13.2 Openable window	<input type="checkbox"/> 704 Smoke detector		
<input type="checkbox"/> 304.14 Insect Screens			
<input type="checkbox"/> 304.15 Doors			
<input type="checkbox"/> 46.131.1 Graffiti			
<input checked="" type="checkbox"/> 105 Unsafe/Unfit Structure			
<input type="checkbox"/> 14-4 Dangerous Building			

Code Explanation(s):

Unsafe Structure - Accessory structure shed/garage has been determined to be an unsafe structure and the condition constitutes such a hazard that it should be razed or removed. Unsafe determination prohibits its use for habitation until repaired with building permit requiring structural engineer plans for repair.

*Demolish unsafe structure within 30 days of the date of written notice with permit or provide structural engineers report stating that the structure is repairable for further review to obtain required permits within 30 days of this written notice.

Notice: In accordance with City Code section 14-86 and Chapter 1, Part III of the Virginia Uniform Statewide Building Code, any person aggrieved by the City of Chesapeake's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the Local Board of Building Code Appeals. The application for appeal must be made within fourteen (14) calendar days of receipt of the notice. (Exception- Appeals for Dangerous Buildings must be made to the City Manager). An application is available on the City's website at <http://www.cityofchesapeake.net/government/City-Departments/Departments/Department-of-Development-and-Permits/forms.htm>

Department of Development and Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

BUILDING INSPECTION REPORT FOR UNSAFE STRUCTURES

SR Number: 18-00013703

Hazardous Structure Number:

Owner/ Agent: Lindsey William J & Marjorie A

Phone No. Unknown

Address: 2445 Strawberry Ln

Real estate Tax Value: \$171,700.00

Utilities Connected: City Water City Sewer Septic Tank Gas Electric

Legal Description:

Type of Structure: Residential Detached Structure Shed Other Structure
 Commercial Occupancy Use, Circle one of the following: R3

Size of the Building: Aprox. Sq..Ft. 1,339 Stories: one

Building is: Occupied Vacant Abandoned

Unsafe Building or Structure: Definition per Chapter 2, 2012 Virginia Maintenance Code:

An existing structure (i) Determined by the code official to be dangerous to the health , safety, and welfare of the occupants of the structure or public ,(ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated , structurally unsafe or of such faulty construction or unstable foundation that partial collapse or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.

Code for Unsafe Structures: 108.1.5 sections 2,3,5,6,7,8,9,10,11

Examination:

On 29 January 2018 at 1043 hours, this inspector arrived at the above referenced location. This location is in the City of Chesapeake, Commonwealth of Virginia. This location was involved in a residential structure fire on 25 January 2018 at 0454 hours.

The building is a single story brick veneer residence that was occupied at the time of the fire. According to city records the building was constructed in 1981. Taken into account the location within the City of Chesapeake, other buildings in the area and the appearance of the construction, it is my opinion that this time frame is correct.

The "A" side of the structure faces Strawberry Lane and is a typical residential of the time frame. There is significant fire damage to the roof area, which has been covered with tarps. The front shows fire and smoke damage at the windows and doors which have been boarded and secured. The "A" side also has a covered porch attached to it.

The "B" side of the structure shows fire and smoke damage at the windows which are secured by boarding. There is significant fire damage noted to the roof area, which has been covered with tarps.

*"The City of Chesapeake adheres to the principles of equal employment opportunity.
This policy extends to all programs and services supported by the City."*

Page 2

The "C" side of the structure shows fire and smoke damage at the windows and doors which have been boarded and secured. The Dominion Power meter base is located near the "C"/"D" corner and the meter has been removed. There is significant fire damage noted to the roof area, which has been covered with tarps.

The "D" side of the structure shows smoke and fire damage which have been boarded and secured. The gas had been secured at the meter. There is significant fire damage noted to the roof area which has been covered with tarps. There is a vertical break in the brick veneer extending from the top of the window towards the roof line.

There was a cleaning/restoration company on site. I identified myself to them and displayed my city credentials. I asked for permission to enter the structure and they allowed me entry. I found significant fire damage to the rear area at the "C"/"D" portion.

I spoke to Deputy Fire Marshal G. Orfield, Chesapeake Fire Marshal's Office about this fire. The fire is currently under investigation. During the investigation DFM Orfield took pictures of the interior which are relevant to the investigation and allowed this inspector to review the pictures. The pictures display significant damage to the roof and the supporting members. The pictures also display large piles of debris throughout the residence.

CONCLUSION:

After consultation with DFM Orfield and examination of the pictures, it is my opinion that this structure meets the definition of an unsafe structure. It is my opinion that due to this classification, a structural engineer be brought in for further examination should the owner want to make repairs. If the owner does not want to make repairs, it is my opinion that the structure be labeled for demolition.

Based upon these findings, I placed placards on the "A" and "C" side of the structure at 1047 hours.

Department of Development and Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

Inspector performing inspection:

Harold B. Phillips III, Code Compliance Inspector

Signature 

Date: 1-30-18

Code Official:
John King

Signature 

Date 1/30/18

*"The City of Chesapeake adheres to the principles of equal employment opportunity.
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Development and Permits
Code Compliance Division
306 Cedar Road
P.O. Box 15225
Chesapeake, Virginia 23328-5225
(757) 382-6378
Fax (757) 382-6793

PUBLIC NOTICE

Please note that Section 38-8 of the Chesapeake City Code requires a rodent inspection prior to issuance of demolition permits.

This is a result of an ordinance adopted to abate rat infestation, which states that a building shall be free of rats or similar rodents prior to demolition. Should an inspection reveal the presence of rats/rodents, the site must be treated as required by the Department of Development & Permits. When it is determined the building is in compliance, the Department of Development & Permits will approve the issuance of a demolition permit.

For additional information concerning this amendment, please contact the Code Compliance Section of the Department of Development & Permits by phoning (757) 382-6378.

Development and Permits
Code Compliance Division
306 Cedar Road
P.O. Box 15225
Chesapeake, Virginia 23328-5225
(757) 382-6378
Fax (757) 382-6793

NOTICE OF UNSAFE STRUCTURE
(DEMOLITION)

March 7, 2018

CERTIFIED: 7017 0190 0000 9661 5455

Capital One Bank (Assignee of Signet Bank, Virginia)
P.O. Box 85168
Richmond, VA 23285

Reference: Demolition of 2445 Strawberry Lane
Tax Parcel 1410000005030
RE: Capital One Bank v. Ms. William J. Lindsey (Marjorie)

Dear Judgement Holder(s):

Pursuant to the Virginia Uniform Statewide Building Code (USBC), Part III, Section 105 and Section 14-35 of the Chesapeake City Code, the structure located at 2445 Strawberry Lane and described as 2 Sub Of Strawberry Lane Reuse Parcels Sec One, has been declared unsafe and a public nuisance by the Code Official.

The defects which make this building unsafe and a public nuisance are listed on the enclosed inspection report. There may be concealed damage not included in the report. Any work performed to correct these defects must meet the minimum standards of the Virginia Uniform Statewide Building Code and the Chesapeake Zoning Ordinance. Plans must be submitted within thirty (30) days for approval prior to the issuance of a building permit or any work being done on the building.

Part III, Section 105.4 of the USBC requires that you declare immediately upon receipt, to the Code Official, acceptance or rejection of the terms of this notice.

Demolition
2445 Strawberry Lane
Page Two
March 7, 2018

You are herewith notified that repair and correction of these defects must be started and a fixed completion date agreed upon, or the unsafe building must be demolished within thirty (30) days from the date of this notice.

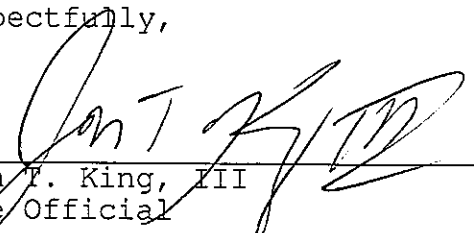
If demolition of the building is contemplated, a demolition permit must be issued before the work is commenced. It shall remain the property owner's responsibility to pay any fees for discontinuance of utility services (water and sewer).

Failure to comply with the above within the stated time shall result in the Code Official having the structure demolished. Any personal items remaining on the premises shall be removed and disposed of. Any expense incurred by the City of Chesapeake in having the unsafe building demolished and the debris removed from the premises shall be charged to the owner and collected in the manner provided by law. The cost shall include a \$150.00 administration fee and the cost of advertising notices as required by Section 14-35 of the Chesapeake City Code.

The owner, agent or person in control of the property has the right to appeal the decision of the Code Official. Should you desire to appeal, execute the furnished appeal form and return same to this office within fourteen (14) days of the date of this notice. A fee of \$25.00 must accompany the application. You will be notified of the time, date and place of the meeting of the Board of Appeals.

Should you agree that demolition is the proper solution and desire the City to have the property cleared at your expense, you may minimize the expense by completing the enclosed work authorization form. It must be notarized and returned promptly to this office.

Respectfully,



John T. King, III
Code Official

Enclosures

DEMOLITION AUTHORIZATION FORM

TO: Code Official
Department of Development and Permits
P.O. Box 15225
Chesapeake, Virginia 23328

Property Identification Number: 1410000005030

Sir:

As the person responsible for the structure located at 2445 Strawberry Lane, I hereby authorize the City to have the building demolished and all debris removed from the premises.

It is understood that expenses incurred by the City in conjunction with this request shall be charged to the landowner and collected in the manner provided by law.

Signature

Current Mailing Address

Phone Number

Duly subscribed to before me this _____ day of _____, 2018.

Notary Public

My Commission Expires: _____.

Notice of Violation

Development and Permits
Code Compliance Division
PO Box 15225
Chesapeake, VA 23328
Fax: 757-382-6793

Parcel # Property Address
Occupancy Type Tenant Name
Owner Name/Address

Type of Inspection Date of Inspection
Violation(s) must be corrected within Name of Inspector

NOTE MAKE ALL NECESSARY REPAIRS CHECKED BELOW - EXPLANATION BELOW CHECKLIST

EXTERIOR	INTERIOR	PLUMBING/FIXTURES	EQUIPMENT
<input type="checkbox"/> 301.3 Vacant Structure	<input type="checkbox"/> 305.1 General	<input type="checkbox"/> 502 Required Facilities	<input type="checkbox"/> 602 Heating & Cooling Supply
<input type="checkbox"/> 302 Exterior Areas	<input type="checkbox"/> 305.2 Structural members	<input type="checkbox"/> 502.1 Water closet	<input type="checkbox"/> 603.1 Mechanical Appliances
<input type="checkbox"/> 302.5 Rodent Harborage	<input type="checkbox"/> 305.3 Interior surfaces	<input type="checkbox"/> 502.1 Bathtub/shower	<input type="checkbox"/> 603.2 Chimney/Vent Connection
<input type="checkbox"/> 302.7 Accessory Structures	<input type="checkbox"/> 305.4 Stairs/walking surfaces	<input type="checkbox"/> 502.1 Lavatory	<input type="checkbox"/> 603.3 Clearances
<input type="checkbox"/> 303 Pools/Enclosures	<input type="checkbox"/> 305.5 Handrails/guardrails	<input type="checkbox"/> 502.1 Kitchen sink	<input type="checkbox"/> 603.4 Controls
<input type="checkbox"/> 304 General Exterior	<input type="checkbox"/> 305.6 Interior Doors	<input type="checkbox"/> 503 Toilet Rooms	<input type="checkbox"/> 603.5 Combustion Air
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<input type="checkbox"/> 304.13 Window/door frame	<input type="checkbox"/> 702 Means of egress		<input type="checkbox"/> 607.4 Cooling Supply
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<input type="checkbox"/> 304.14 Insect Screens			
<input type="checkbox"/> 304.15 Doors			
<input type="checkbox"/> 46.131.1 Graffiti			
<input checked="" type="checkbox"/> 105 Unsafe/Unfit Structure	<p>Code Explanation(s): Unsafe Structure - Accessory structure shed/garage has been determined to be an unsafe structure and the condition constitutes such a hazard that it should be razed or removed. Unsafe determination prohibits its use for habitation until repaired with building permit requiring structural engineer plans for repair.</p> <p>*Demolish unsafe structure within 30 days of the date of written notice with permit or provide structural engineers report stating that the structure is repairable for further review to obtain required permits within 30 days of this written notice.</p>		
<input type="checkbox"/> 14-4 Dangerous Building			

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Department of Development and Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

BUILDING INSPECTION REPORT FOR UNSAFE STRUCTURES

SR Number: 18-00013703

Hazardous Structure Number:

Owner/ Agent: Lindsey William J & Marjorie A

Phone No. Unknown

Address: 2445 Strawberry Ln

Real estate Tax Value: \$171,700.00

Utilities Connected: City Water City Sewer Septic Tank Gas Electric

Legal Description:

Type of Structure: Residential Detached Structure Shed Other Structure
 Commercial Occupancy Use, Circle one of the following: R3

Size of the Building: Aprox. Sq..Ft. 1,339 Stories: one

Building is: Occupied Vacant Abandoned

Unsafe Building or Structure: Definition per Chapter 2, 2012 Virginia Maintenance Code:

An existing structure (i) Determined by the code official to be dangerous to the health , safety, and welfare of the occupants of the structure or public ,(ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated , structurally unsafe or of such faulty construction or unstable foundation that partial collapse or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.

Code for Unsafe Structures: 108.1.5 sections 2,3,5,6,7,8,9,10,11

Examination:

On 29 January 2018 at 1043 hours, this inspector arrived at the above referenced location. This location is in the City of Chesapeake, Commonwealth of Virginia. This location was involved in a residential structure fire on 25 January 2018 at 0454 hours.

The building is a single story brick veneer residence that was occupied at the time of the fire. According to city records the building was constructed in 1981. Taken into account the location within the City of Chesapeake, other buildings in the area and the appearance of the construction, it is my opinion that this time frame is correct.

The "A" side of the structure faces Strawberry Lane and is a typical residential of the time frame. There is significant fire damage to the roof area, which has been covered with tarps. The front shows fire and smoke damage at the windows and doors which have been boarded and secured. The "A" side also has a covered porch attached to it.

The "B" side of the structure shows fire and smoke damage at the windows which are secured by boarding. There is significant fire damage noted to the roof area, which has been covered with tarps.

*"The City of Chesapeake adheres to the principles of equal employment opportunity.
This policy extends to all programs and services supported by the City."*

Page 2

The "C" side of the structure shows fire and smoke damage at the windows and doors which have been boarded and secured. The Dominion Power meter base is located near the "C"/"D" corner and the meter has been removed. There is significant fire damage noted to the roof area, which has been covered with tarps.

The "D" side of the structure shows smoke and fire damage which have been boarded and secured. The gas had been secured at the meter. There is significant fire damage noted to the roof area which has been covered with tarps. There is a vertical break in the brick veneer extending from the top of the window towards the roof line.

There was a cleaning/restoration company on site. I identified myself to them and displayed my city credentials. I asked for permission to enter the structure and they allowed me entry. I found significant fire damage to the rear area at the "C"/"D" portion.

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CONCLUSION:

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Based upon these findings, I placed placards on the "A" and "C" side of the structure at 1047 hours.

Department of Development and Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

Inspector performing inspection:

Harold B. Phillips III, Code Compliance Inspector

Signature HB Phillips III

Date: 1-30-18

Code Official:

John King

Signature John King

Date 1/30/18

*"The City of Chesapeake adheres to the principles of equal employment opportunity.
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Development and Permits
Code Compliance Division
306 Cedar Road
P.O. Box 15225
Chesapeake, Virginia 23328-5225
(757) 382-6378
Fax (757) 382-6793

PUBLIC NOTICE

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This is a result of an ordinance adopted to abate rat infestation, which states that a building shall be free of rats or similar rodents prior to demolition. Should an inspection reveal the presence of rats/rodents, the site must be treated as required by the Department of Development & Permits. When it is determined the building is in compliance, the Department of Development & Permits will approve the issuance of a demolition permit.

For additional information concerning this amendment, please contact the Code Compliance Section of the Department of Development & Permits by phoning (757) 382-6378.

Development and Permits
Code Compliance Division
306 Cedar Road
P.O. Box 15225
Chesapeake, Virginia 23328-5225
(757) 382-6378
Fax (757) 382-6793

NOTICE OF UNSAFE STRUCTURE
(DEMOLITION)

March 26, 2018

CERTIFIED: 7017 0530 0000 2512 5318

William J. Lindsey
Marjorie A. Lindsey
2445 Strawberry Lane
Chesapeake, VA 23324

Reference: Demolition of 2445 Strawberry Lane
Tax Parcel 1410000005030

Dear Property Owner(s):

Pursuant to the Virginia Uniform Statewide Building Code (USBC), Part III, Section 105 and Section 14-35 of the Chesapeake City Code, the structure located at 2445 Strawberry Lane and described as 2 Sub Of Strawberry Lane Reuse Parcels Sec One, has been declared unsafe and a public nuisance by the Code Official.

The defects which make this building unsafe and a public nuisance are listed on the enclosed inspection report. There may be concealed damage not included in the report. Any work performed to correct these defects must meet the minimum standards of the Virginia Uniform Statewide Building Code and the Chesapeake Zoning Ordinance. Plans must be submitted within thirty (30) days for approval prior to the issuance of a building permit or any work being done on the building.

Part III, Section 105.4 of the USBC requires that you declare immediately upon receipt, to the Code Official, acceptance or rejection of the terms of this notice.

Demolition
2445 Strawberry Lane
Page Two
March 26, 2018

You are herewith notified that repair and correction of these defects must be started and a fixed completion date agreed upon, or the unsafe building must be demolished within thirty (30) days from the date of this notice.

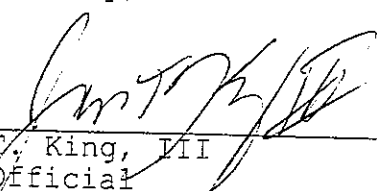
If demolition of the building is contemplated, a demolition permit must be issued before the work is commenced. It shall remain the property owner's responsibility to pay any fees for discontinuance of utility services (water and sewer).

Failure to comply with the above within the stated time shall result in the Code Official having the structure demolished. Any personal items remaining on the premises shall be removed and disposed of. Any expense incurred by the City of Chesapeake in having the unsafe building demolished and the debris removed from the premises shall be charged to the owner and collected in the manner provided by law. The cost shall include a \$150.00 administration fee and the cost of advertising notices as required by Section 14-35 of the Chesapeake City Code.

The owner, agent or person in control of the property has the right to appeal the decision of the Code Official. Should you desire to appeal, execute the furnished appeal form and return same to this office within fourteen (14) days of the date of this notice. A fee of \$25.00 must accompany the application. You will be notified of the time, date and place of the meeting of the Board of Appeals.

Should you agree that demolition is the proper solution and desire the City to have the property cleared at your expense, you may minimize the expense by completing the enclosed work authorization form. It must be notarized and returned promptly to this office.

Respectfully,



John T. King, III
Code Official

Enclosures

DEMOLITION AUTHORIZATION FORM

TO: Code Official
Department of Development and Permits
P.O. Box 15225
Chesapeake, Virginia 23328

Property Identification Number: 1410000005030

Sir:

As the person responsible for the structure located at 2445 Strawberry Lane, I hereby authorize the City to have the building demolished and all debris removed from the premises.

It is understood that expenses incurred by the City in conjunction with this request shall be charged to the landowner and collected in the manner provided by law.

Signature

Current Mailing Address

Phone Number

Duly subscribed to before me this _____ day of _____, 2018.

Notary Public

My Commission Expires: _____

Department of Development and Permits
Attention: John T. King, III
Post Office Box 15225
Chesapeake, Virginia 23328

Reference: 2445 Strawberry Lane - 1410000005030

Dear Sir:

I herewith appeal the decision of the Code Official on the above-referenced property. The grounds for appeal are:

_____ The Property Maintenance Code has been misapplied to my property. Please explain below.

_____ The Code Official has erroneously refused to grant a modification to the provisions of the Property Maintenance Code covering the manner of maintenance or use of the materials to be used in the maintenance or repair of that building or structure. Please explain below.

Additional Comments/Explanations:

I, or my agent, will appear before the Board of Building Code Appeals when notified of the time and place. Enclosed is my application fee of \$25.00 payable to the City of Chesapeake, Virginia.

Owner

Other

Signature

Date

Address

Contact Phone Number

Department of Development and Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

AMENDED BUILDING INSPECTION REPORT FOR UNSAFE STRUCTURES

SR Number: 18-00013703

Hazardous Structure Number:

Owner/ Agent: Lindsey William J & Marjorie A

Phone No. Unknown

Address: 2445 Strawberry Ln

Real estate Tax Value: \$171,700.00

Utilities Connected: City Water City Sewer Septic Tank Gas Electric

Legal Description:

Type of Structure: Residential Detached Structure Shed Other Structure
 Commercial Occupancy Use, Circle one of the following: R3

Size of the Building: Aprox. Sq..Ft. 1,339 Stories: one

Building is: Occupied Vacant Abandoned

Unsafe Building or Structure: Definition per Chapter 2, 2012 Virginia Maintenance Code:

An existing structure (i) Determined by the code official to be dangerous to the health , safety, and welfare of the occupants of the structure or public ,(ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated , structurally unsafe or of such faulty construction or unstable foundation that partial collapse or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.

Code for Unsafe Structures: Chapter 1 Section 105, 2012 Virginia Maintenance Code

Examination:

On 29 January 2018 at 1043 hours, this inspector arrived at the above referenced location. This location is in the City of Chesapeake, Commonwealth of Virginia. This location was involved in a residential structure fire on 25 January 2018 at 0454 hours.

The building is a single story brick veneer residence that was occupied at the time of the fire. According to city records the building was constructed in 1981. Taken into account the location within the City of Chesapeake, other buildings in the area and the appearance of the construction, it is my opinion that this time frame is correct.

The "A" side of the structure faces Strawberry Lane and is a typical residential of the time frame. There is significant fire damage to the roof area, which has been covered with tarps. The front shows fire and smoke damage at the windows and doors which have been boarded and secured. The "A" side also has a covered porch attached to it.

The "B" side of the structure shows fire and smoke damage at the windows which are secured by boarding. There is significant fire damage noted to the roof area, which has been covered with tarps.

*"The City of Chesapeake adheres to the principles of equal employment opportunity.
This policy extends to all programs and services supported by the City."*

Page 2

The "C" side of the structure shows fire and smoke damage at the windows and doors which have been boarded and secured. The Dominion Power meter base is located near the "C"/"D" corner and the meter has been removed. There is significant fire damage noted to the roof area, which has been covered with tarps.

The "D" side of the structure shows smoke and fire damage which have been boarded and secured. The gas had been secured at the meter. There is significant fire damage noted to the roof area which has been covered with tarps. There is a vertical break in the brick veneer extending from the top of the window towards the roof line.

I spoke to Deputy Fire Marshal G. Orfield, Chesapeake Fire Marshal's Office about this fire. The fire is currently under investigation. During the investigation DFM Orfield took pictures of the interior which are relevant to the investigation and allowed this inspector to review the pictures. The pictures display significant damage to the roof and the supporting members. The pictures also display large piles of debris throughout the residence.

CONCLUSION:

After consultation with DFM Orfield and examination of the pictures, it is my opinion that this structure meets the definition of an unsafe structure. It is my opinion that due to this classification, a structural engineer be brought in for further examination should the owner want to make repairs. If the owner does not want to make repairs, it is my opinion that the structure be labeled for demolition.

Based upon these findings, I placed placards on the "A" and "C" side of the structure at 1047 hours.

Department of Development and Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

Inspector performing inspection:


Harold B. Phillips III, Code Compliance Inspector

Signature 

Date: 3-22-18

Code Official:

John King

Signature 

Date 3/22/18

*"The City of Chesapeake adheres to the principles of equal employment opportunity.
This policy extends to all programs and services supported by the City."*

Notice of Violation

Development and Permits
Code Compliance Division
PO Box 15225
Chesapeake, VA 23328
Fax: 757-382-6793

Parcel # 1410000005030 Property Address 2445 STRAWBERRY LN.

Occupancy Type Occupied Tenant Name

Owner Name/Address LINDSEY, WILLIAM J. & MARJORIE A.

Type of Inspection Initial Inspection Date of Inspection 01/30/2018

Violation(s) must be corrected within 30 days Name of Inspector Julian T. Parcell

NOTE MAKE ALL NECESSARY REPAIRS CHECKED BELOW - EXPLANATION BELOW CHECKLIST

EXTERIOR	INTERIOR	PLUMBING/FIXTURES	EQUIPMENT
<input type="checkbox"/> 301.3 Vacant Structure	<input type="checkbox"/> 305.1 General	<input type="checkbox"/> 502 Required Facilities	<input type="checkbox"/> 602 Heating & Cooling Supply
<input type="checkbox"/> 302 Exterior Areas	<input type="checkbox"/> 305.2 Structural members	<input type="checkbox"/> 502.1 Water closet	<input type="checkbox"/> 603.1 Mechanical Appliances
<input type="checkbox"/> 302.5 Rodent Harborage	<input type="checkbox"/> 305.3 Interior surfaces	<input type="checkbox"/> 502.1 Bathtub/shower	<input type="checkbox"/> 603.2 Chimney/Vent Connection
<input type="checkbox"/> 302.7 Accessory Structures	<input type="checkbox"/> 305.4 Stairs/walking surfaces	<input type="checkbox"/> 502.1 Lavatory	<input type="checkbox"/> 603.3 Clearances
<input type="checkbox"/> 303 Pools/Enclosures	<input type="checkbox"/> 305.5 Handrails/guardrails	<input type="checkbox"/> 502.1 Kitchen sink	<input type="checkbox"/> 603.4 Controls
<input type="checkbox"/> 304 General Exterior	<input type="checkbox"/> 305.6 Interior Doors	<input type="checkbox"/> 503 Toilet Rooms	<input type="checkbox"/> 603.5 Combustion Air
<input type="checkbox"/> 304.2 Protective Treatment	<input type="checkbox"/> 305.7 Carbon Monoxide Alarms	<input type="checkbox"/> 504.1 Fixture maintenance	ELECTRICAL
<input type="checkbox"/> 62-2 Weeds/Debris	<input type="checkbox"/> 307.1 Handrails/Guardrails	<input type="checkbox"/> 505.1 Fixture connections	
<input type="checkbox"/> 304.3 Street Numbers	<input type="checkbox"/> 308.1 Interior Rubbish	<input type="checkbox"/> 505.2 Contamination	<input type="checkbox"/> 604.1 Facilities Required
<input type="checkbox"/> 304.4 Structural Members	<input type="checkbox"/> 309 Pest Elimination	<input type="checkbox"/> 505.3 Supply	<input type="checkbox"/> 604.3 System Hazards
<input type="checkbox"/> 304.5 Foundation Walls	<input type="checkbox"/> 310 Lead Based Paint	<input type="checkbox"/> 505.4 Water heating	<input type="checkbox"/> 605.1 Installation
<input type="checkbox"/> 304.6 Exterior Walls	<input type="checkbox"/> 402 Light	<input type="checkbox"/> 506.1 Sewer Connection	<input type="checkbox"/> 605.2 Receptacles
<input type="checkbox"/> 304.7 Roofs/Drainage	<input type="checkbox"/> 403 Ventilation	<input type="checkbox"/> 506.2 Sewage maintenance	<input type="checkbox"/> 605.3 Lighting Fixtures
<input type="checkbox"/> 304.10 Stairs/decks/balconies	<input type="checkbox"/> 404 Occupancy Limitations	<input type="checkbox"/> 507.1 Storm Drainage	<input type="checkbox"/> 607.1 Duct System
<input type="checkbox"/> 304.13 Window/door frame	<input type="checkbox"/> 702 Means of egress	<input type="checkbox"/>	<input type="checkbox"/> 607.4 Cooling Supply
<input type="checkbox"/> 304.13.1 Glazing	<input type="checkbox"/> 702.3 Locked doors	<input type="checkbox"/>	<input type="checkbox"/> 606 Elevators
<input type="checkbox"/> 304.13.2 Openable window	<input type="checkbox"/> 704 Smoke detector	<input type="checkbox"/>	

Code Explanation(s):

Unsafe Structure - Accessory structure shed/garage has been determined to be an unsafe structure and the condition constitutes such a hazard that it should be razed or removed. Unsafe determination prohibits its use for habitation until repaired with building permit requiring structural engineer plans for repair.

*Demolish unsafe structure within 30 days of the date of written notice with permit or provide structural engineers report stating that the structure is repairable for further review to obtain required permits within 30 days of this written notice.

Notice: In accordance with City Code section 14-86 and Chapter 1, Part III of the Virginia Uniform Statewide Building Code, any person aggrieved by the City of Chesapeake's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the Local Board of Building Code Appeals. The application for appeal must be made within fourteen (14) calendar days of receipt of the notice. (Exception- Appeals for Dangerous Buildings must be made to the City Manager). An application is available on the City's website at <http://www.cityofchesapeake.net/government/City-Departments/Departments/Department-of-Development-and-Permits/forms.htm>

PUBLIC NOTICE

Please note that Section 38-8 of the Chesapeake City Code requires a rodent inspection prior to issuance of demolition permits.

This is a result of an ordinance adopted to abate rat infestation, which states that a building shall be free of rats or similar rodents prior to demolition. Should an inspection reveal the presence of rats/rodents, the site must be treated as required by the Department of Development & Permits. When it is determined the building is in compliance, the Department of Development & Permits will approve the issuance of a demolition permit.

For additional information concerning this amendment, please contact the Code Compliance Section of the Department of Development & Permits by phoning (757) 382-6378.

Development and Permits
Code Compliance Division
306 Cedar Road
P.O. Box 15225
Chesapeake, Virginia 23328-5225
(757) 382-6378
Fax (757) 382-6793

NOTICE OF UNSAFE STRUCTURE
(DEMOLITION)

March 26, 2018

CERTIFIED: 7017 0530 0000 2512 5318

William J. Lindsey
Marjorie A. Lindsey
2445 Strawberry Lane
Chesapeake, VA 23324

Reference: Demolition of 2445 Strawberry Lane
Tax Parcel 1410000005030

Dear Property Owner(s):

Pursuant to the Virginia Uniform Statewide Building Code (USBC), Part III, Section 105 and Section 14-35 of the Chesapeake City Code, the structure located at 2445 Strawberry Lane and described as 2 Sub Of Strawberry Lane Reuse Parcels Sec One, has been declared unsafe and a public nuisance by the Code Official.

The defects which make this building unsafe and a public nuisance are listed on the enclosed inspection report. There may be concealed damage not included in the report. Any work performed to correct these defects must meet the minimum standards of the Virginia Uniform Statewide Building Code and the Chesapeake Zoning Ordinance. Plans must be submitted within thirty (30) days for approval prior to the issuance of a building permit or any work being done on the building.

Part III, Section 105.4 of the USBC requires that you declare immediately upon receipt, to the Code Official, acceptance or rejection of the terms of this notice.

Demolition
2445 Strawberry Lane
Page Two
March 26, 2018

You are herewith notified that repair and correction of these defects must be started and a fixed completion date agreed upon, or the unsafe building must be demolished within thirty (30) days from the date of this notice.

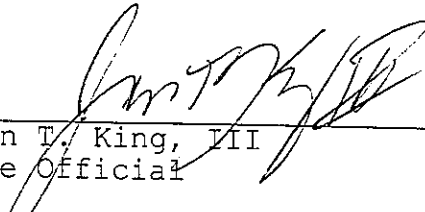
If demolition of the building is contemplated, a demolition permit must be issued before the work is commenced. It shall remain the property owner's responsibility to pay any fees for discontinuance of utility services (water and sewer).

Failure to comply with the above within the stated time shall result in the Code Official having the structure demolished. Any personal items remaining on the premises shall be removed and disposed of. Any expense incurred by the City of Chesapeake in having the unsafe building demolished and the debris removed from the premises shall be charged to the owner and collected in the manner provided by law. The cost shall include a \$150.00 administration fee and the cost of advertising notices as required by Section 14-35 of the Chesapeake City Code.

The owner, agent or person in control of the property has the right to appeal the decision of the Code Official. Should you desire to appeal, execute the furnished appeal form and return same to this office within fourteen (14) days of the date of this notice. A fee of \$25.00 must accompany the application. You will be notified of the time, date and place of the meeting of the Board of Appeals.

Should you agree that demolition is the proper solution and desire the City to have the property cleared at your expense, you may minimize the expense by completing the enclosed work authorization form. It must be notarized and returned promptly to this office.

Respectfully,



John T. King, III
Code Official

Enclosures

DEMOLITION AUTHORIZATION FORM

TO: Code Official
Department of Development and Permits
P.O. Box 15225
Chesapeake, Virginia 23328

Property Identification Number: 1410000005030

Sir:

As the person responsible for the structure located at 2445 Strawberry Lane, I hereby authorize the City to have the building demolished and all debris removed from the premises.

It is understood that expenses incurred by the City in conjunction with this request shall be charged to the landowner and collected in the manner provided by law.

Signature

Current Mailing Address

Phone Number

Duly subscribed to before me this _____ day of _____,
2018.

Notary Public

My Commission Expires: _____.

Department of Development and Permits
Attention: John T. King, III
Post Office Box 15225
Chesapeake, Virginia 23328

Reference: 2445 Strawberry Lane - 1410000005030

Dear Sir:

I herewith appeal the decision of the Code Official on the above-referenced property. The grounds for appeal are:

_____ The Property Maintenance Code has been misapplied to my property. Please explain below.

_____ The Code Official has erroneously refused to grant a modification to the provisions of the Property Maintenance Code covering the manner of maintenance or use of the materials to be used in the maintenance or repair of that building or structure. Please explain below.

Additional Comments/Explanations:

I, or my agent, will appear before the Board of Building Code Appeals when notified of the time and place. Enclosed is my application fee of \$25.00 payable to the City of Chesapeake, Virginia.

Owner

Other

Signature

Date

Address

Contact Phone Number

AMENDED BUILDING INSPECTION REPORT FOR UNSAFE STRUCTURES

SR Number: 18-00013703

Hazardous Structure Number:

Owner/ Agent: Lindsey William J & Marjorie A

Phone No. Unknown

Address: 2445 Strawberry Ln

Real estate Tax Value: \$171,700.00

Utilities Connected: City Water City Sewer Septic Tank Gas Electric

Legal Description:

Type of Structure: Residential Detached Structure Shed Other Structure
 Commercial Occupancy Use, Circle one of the following: R3

Size of the Building: Aprox. Sq..Ft. 1,339 Stories: one

Building is: Occupied Vacant Abandoned

Unsafe Building or Structure: Definition per Chapter 2, 2012 Virginia Maintenance Code:

An existing structure (i) Determined by the code official to be dangerous to the health , safety, and welfare of the occupants of the structure or public ,(ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated , structurally unsafe or of such faulty construction or unstable foundation that partial collapse or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.

Code for Unsafe Structures: Chapter 1 Section 105. 2012 Virginia Maintenance Code

Examination:

On 29 January 2018 at 1043 hours, this inspector arrived at the above referenced location. This location is in the City of Chesapeake, Commonwealth of Virginia. This location was involved in a residential structure fire on 25 January 2018 at 0454 hours.

The building is a single story brick veneer residence that was occupied at the time of the fire. According to city records the building was constructed in 1981. Taken into account the location within the City of Chesapeake, other buildings in the area and the appearance of the construction, it is my opinion that this time frame is correct.

The "A" side of the structure faces Strawberry Lane and is a typical residential of the time frame. There is significant fire damage to the roof area, which has been covered with tarps. The front shows fire and smoke damage at the windows and doors which have been boarded and secured. The "A" side also has a covered porch attached to it.

The "B" side of the structure shows fire and smoke damage at the windows which are secured by boarding. There is significant fire damage noted to the roof area, which has been covered with tarps.

*"The City of Chesapeake adheres to the principles of equal employment opportunity.
This policy extends to all programs and services supported by the City."*

Page 2

The "C" side of the structure shows fire and smoke damage at the windows and doors which have been boarded and secured. The Dominion Power meter base is located near the "C"/"D" corner and the meter has been removed. There is significant fire damage noted to the roof area, which has been covered with tarps.

The "D" side of the structure shows smoke and fire damage which have been boarded and secured. The gas had been secured at the meter. There is significant fire damage noted to the roof area which has been covered with tarps. There is a vertical break in the brick veneer extending from the top of the window towards the roof line.

I spoke to Deputy Fire Marshal G. Orfield, Chesapeake Fire Marshal's Office about this fire. The fire is currently under investigation. During the investigation DFM Orfield took pictures of the interior which are relevant to the investigation and allowed this inspector to review the pictures. The pictures display significant damage to the roof and the supporting members. The pictures also display large piles of debris throughout the residence.

CONCLUSION:

After consultation with DFM Orfield and examination of the pictures, it is my opinion that this structure meets the definition of an unsafe structure. It is my opinion that due to this classification, a structural engineer be brought in for further examination should the owner want to make repairs. If the owner does not want to make repairs, it is my opinion that the structure be labeled for demolition.

Based upon these findings, I placed placards on the "A" and "C" side of the structure at 1047 hours.

Department of Development and Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

Inspector performing inspection:

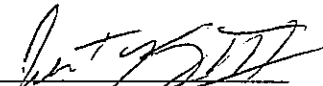
Harold B. Phillips III, Code Compliance Inspector

Signature 

Date: 3-22-18

Code Official:

John King

Signature 

Date 3/22/18

Notice of Violation

Development and Permits
Code Compliance Division
PO Box 15225
Chesapeake, VA 23328
Fax: 757-382-6793

Parcel # Property Address

Occupancy Type Tenant Name

Owner Name/Address

Type of Inspection Date of Inspection

Violation(s) must be corrected within Name of Inspector

NOTE MAKE ALL NECESSARY REPAIRS CHECKED BELOW - EXPLANATION BELOW CHECKLIST

EXTERIOR	INTERIOR	PLUMBING/FIXTURES	EQUIPMENT
<input type="checkbox"/> 301.3 Vacant Structure	<input type="checkbox"/> 305.1 General	<input type="checkbox"/> 502 Required Facilities	<input type="checkbox"/> 602 Heating & Cooling Supply
<input type="checkbox"/> 302 Exterior Areas	<input type="checkbox"/> 305.2 Structural members	<input type="checkbox"/> 502.1 Water closet	<input type="checkbox"/> 603.1 Mechanical Appliances
<input type="checkbox"/> 302.5 Rodent Harborage	<input type="checkbox"/> 305.3 Interior surfaces	<input type="checkbox"/> 502.1 Bathtub/shower	<input type="checkbox"/> 603.2 Chimney/Vent Connection
<input type="checkbox"/> 302.7 Accessory Structures	<input type="checkbox"/> 305.4 Stairs/walking surfaces	<input type="checkbox"/> 502.1 Lavatory	<input type="checkbox"/> 603.3 Clearances
<input type="checkbox"/> 303 Pools/Enclosures	<input type="checkbox"/> 305.5 Handrails/guardrails	<input type="checkbox"/> 502.1 Kitchen sink	<input type="checkbox"/> 603.4 Controls
<input type="checkbox"/> 304 General Exterior	<input type="checkbox"/> 305.6 Interior Doors	<input type="checkbox"/> 503 Toilet Rooms	<input type="checkbox"/> 603.5 Combustion Air
<input type="checkbox"/> 304.2 Protective Treatment	<input type="checkbox"/> 305.7 Carbon Monoxide Alarms	<input type="checkbox"/> 504.1 Fixture maintenance	
<input type="checkbox"/> 62-2 Weeds/Debris	<input type="checkbox"/> 307.1 Handrails/Guardrails	<input type="checkbox"/> 505.1 Fixture connections	<input type="checkbox"/> ELECTRICAL
<input type="checkbox"/> 304.3 Street Numbers	<input type="checkbox"/> 308.1 Interior Rubbish	<input type="checkbox"/> 505.2 Contamination	
<input type="checkbox"/> 304.4 Structural Members	<input type="checkbox"/> 309 Pest Elimination	<input type="checkbox"/> 505.3 Supply	<input type="checkbox"/> 604.1 Facilities Required
<input type="checkbox"/> 304.5 Foundation Walls	<input type="checkbox"/> 310 Lead Based Paint	<input type="checkbox"/> 505.4 Water heating	<input type="checkbox"/> 604.3 System Hazards
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<input type="checkbox"/> 304.10 Stairs/decks/balconies	<input type="checkbox"/> 404 Occupancy Limitations	<input type="checkbox"/> 507.1 Storm Drainage	<input type="checkbox"/> 605.3 Lighting Fixtures
<input type="checkbox"/> 304.13 Window/door frame	<input type="checkbox"/> 702 Means of egress		<input type="checkbox"/> 607.1 Duct System
<input type="checkbox"/> 304.13.1 Glazing	<input type="checkbox"/> 702.3 Locked doors		<input type="checkbox"/> 607.4 Cooling Supply
<input type="checkbox"/> 304.13.2 Openable window	<input type="checkbox"/> 704 Smoke detector		<input type="checkbox"/> 606 Elevators

Code Explanation(s):
 Unsafe Structure - Accessory structure shed/garage has been determined to be an unsafe structure and the condition constitutes such a hazard that it should be razed or removed. Unsafe determination prohibits its use for habitation until repaired with building permit requiring structural engineer plans for repair.
 *Demolish unsafe structure within 30 days of the date of written notice with permit or provide structural engineers report stating that the structure is repairable for further review to obtain required permits within 30 days of this written notice.

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For additional information concerning this amendment, please contact the Code Compliance Section of the Department of Development & Permits by phoning (757) 382-6378.

Proof of Posting this notice @ house



City of Chesapeake

Development and Permits
Code Compliance Division
306 Cedar Road
P.O. Box 15225
Chesapeake, Virginia 23328-5225
(757) 382-6378
Fax (757) 382-6793

NOTICE OF UNSAFE STRUCTURE
(DEMOLITION)

March 26, 2018

WW180329056

CERTIFIED: 7017 0530 0000 5212 5288

RECEIVED BY SHERIFF
2018 MAR 29 11:51 AM
CHESAPEAKE
AH ID: 04

Karen Lindsey
2445 Strawberry Lane
Chesapeake, VA 23324

5

Reference: Demolition of 2445 Strawberry Lane
Tax Parcel 1410000005030

Dear Property Owner(s):

Pursuant to the Virginia Uniform Statewide Building Code (USBC), Part III, Section 105 and Section 14-35 of the Chesapeake City Code, the structure located at 2445 Strawberry Lane and described as 2 Sub Of Strawberry Lane Reuse Parcels Sec One, has been declared unsafe and a public nuisance by the Code Official.

The defects which make this building unsafe and a public nuisance are listed on the enclosed inspection report. There may be concealed damage not included in the report. Any work performed to correct these defects must meet the minimum standards of the Virginia Uniform Statewide Building Code and the Chesapeake Zoning Ordinance. Plans must be submitted within thirty (30) days for approval prior to the issuance of a building permit or any work being done on the building.

Part III, Section 105.4 of the USBC requires that you declare immediately upon receipt, to the Code Official, acceptance or rejection of the terms of this notice.

Demolition
2445 Strawberry Lane
Page Two
March 26, 2018

You are herewith notified that repair and correction of these defects must be started and a fixed completion date agreed upon, or the unsafe building must be demolished within thirty (30) days from the date of this notice.

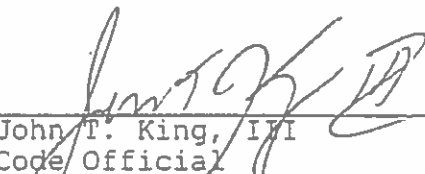
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Should you agree that demolition is the proper solution and desire the City to have the property cleared at your expense, you may minimize the expense by completing the enclosed work authorization form. It must be notarized and returned promptly to this office.

Respectfully,



John T. King, III
Code Official

Enclosures

DEMOLITION AUTHORIZATION FORM

TO: Code Official
Department of Development and Permits
P.O. Box 15225
Chesapeake, Virginia 23328

Property Identification Number: 1410000005030

Sir:

As the person responsible for the structure located at 2445 Strawberry Lane, I hereby authorize the City to have the building demolished and all debris removed from the premises.

It is understood that expenses incurred by the City in conjunction with this request shall be charged to the landowner and collected in the manner provided by law.

Signature

Current Mailing Address

Phone Number

Duly subscribed to before me this _____ day of _____, 2018.

Notary Public

My Commission Expires: _____.

Department of Development and Permits
Attention: John T. King, III
Post Office Box 15225
Chesapeake, Virginia 23328

Reference: 2445 Strawberry Lane - 1410000005030

Dear Sir:

I herewith appeal the decision of the Code Official on the above-referenced property. The grounds for appeal are:

_____ The Property Maintenance Code has been misapplied to my property. Please explain below.

_____ The Code Official has erroneously refused to grant a modification to the provisions of the Property Maintenance Code covering the manner of maintenance or use of the materials to be used in the maintenance or repair of that building or structure. Please explain below.

Additional Comments/Explanations:

I, or my agent, will appear before the Board of Building Code Appeals when notified of the time and place. Enclosed is my application fee of \$25.00 payable to the City of Chesapeake, Virginia.

[] Owner

[] Other

Signature

Date

Address

Contact Phone Number

AMENDED BUILDING INSPECTION REPORT FOR UNSAFE STRUCTURES

SR Number: 18-00013703

Hazardous Structure Number:

Owner/ Agent: Lindsey William J & Marjorie A

Phone No. Unknown

Address: 2445 Strawberry Ln

Real estate Tax Value: \$171,700.00

Utilities Connected: City Water City Sewer Septic Tank Gas Electric
Legal Description:

Type of Structure: Residential Detached Structure Shed Other Structure
 Commercial Occupancy Use, Circle one of the following: R3

Size of the Building: Aprox. Sq..Ft. 1,339 Stories: one

Building is: Occupied Vacant Abandoned

Unsafe Building or Structure: Definition per Chapter 2, 2012 Virginia Maintenance Code:

An existing structure (i) Determined by the code official to be dangerous to the health , safety, and welfare of the occupants of the structure or public ,(ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated , structurally unsafe or of such faulty construction or unstable foundation that partial collapse or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.

Code for Unsafe Structures: Chapter 1 Section 105, 2012 Virginia Maintenance Code

Examination:

On 29 January 2018 at 1043 hours, this inspector arrived at the above referenced location. This location is in the City of Chesapeake, Commonwealth of Virginia. This location was involved in a residential structure fire on 25 January 2018 at 0454 hours.

The building is a single story brick veneer residence that was occupied at the time of the fire. According to city records the building was constructed in 1981. Taken into account the location within the City of Chesapeake, other buildings in the area and the appearance of the construction, it is my opinion that this time frame is correct.

The "A" side of the structure faces Strawberry Lane and is a typical residential of the time frame. There is significant fire damage to the roof area, which has been covered with tarps. The front shows fire and smoke damage at the windows and doors which have been boarded and secured. The "A" side also has a covered porch attached to it.

The "B" side of the structure shows fire and smoke damage at the windows which are secured by boarding. There is significant fire damage noted to the roof area, which has been covered with tarps.

Department of Development and Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

Page 2

The "C" side of the structure shows fire and smoke damage at the windows and doors which have been boarded and secured. The Dominion Power meter base is located near the "C"/"D" corner and the meter has been removed. There is significant fire damage noted to the roof area, which has been covered with tarps.

The "D" side of the structure shows smoke and fire damage which have been boarded and secured. The gas had been secured at the meter. There is significant fire damage noted to the roof area which has been covered with tarps. There is a vertical break in the brick veneer extending from the top of the window towards the roof line.

I spoke to Deputy Fire Marshal G. Orfield, Chesapeake Fire Marshal's Office about this fire. The fire is currently under investigation. During the investigation DFM Orfield took pictures of the interior which are relevant to the investigation and allowed this inspector to review the pictures. The pictures display significant damage to the roof and the supporting members. The pictures also display large piles of debris throughout the residence.

CONCLUSION:

After consultation with DFM Orfield and examination of the pictures, it is my opinion that this structure meets the definition of an unsafe structure. It is my opinion that due to this classification, a structural engineer be brought in for further examination should the owner want to make repairs. If the owner does not want to make repairs, it is my opinion that the structure be labeled for demolition.

Based upon these findings, I placed placards on the "A" and "C" side of the structure at 1047 hours.

Department of Development and Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

Inspector performing inspection:

Harold B. Phillips III, Code Compliance Inspector

Signature 

Date: 3-22-18

Code Official:

John King

Signature 

Date 3/22/18

Notice of Violation

Development and Permits
Code Compliance Division
PO Box 15225
Chesapeake, VA 23328
Fax: 757-382-6793

Parcel # **1410000005030** Property Address **2445 STRAWBERRY LN.**
 Occupancy Type **Occupied** Tenant Name
 Owner Name/Address **LINDSEY, WILLIAM J. & MARJORIE A.**

Type of Inspection **Initial Inspection** Date of Inspection **01/30/2018**
 Violation(s) must be corrected within **30 days** Name of Inspector **Julian T. Parcell**

NOTE MAKE ALL NECESSARY REPAIRS CHECKED BELOW - EXPLANATION BELOW CHECKLIST

EXTERIOR	INTERIOR	PLUMBING/FIXTURES	EQUIPMENT
<input type="checkbox"/> 301.3 Vacant Structure	<input type="checkbox"/> 305.1 General	<input type="checkbox"/> 502 Required Facilities	<input type="checkbox"/> 602 Heating & Cooling Supply
<input type="checkbox"/> 302 Exterior Areas	<input type="checkbox"/> 305.2 Structural members	<input type="checkbox"/> 502.1 Water closet	<input type="checkbox"/> 603.1 Mechanical Appliances
<input type="checkbox"/> 302.5 Rodent Harborage	<input type="checkbox"/> 305.3 Interior surfaces	<input type="checkbox"/> 502.1 Bathtub/shower	<input type="checkbox"/> 603.2 Chimney/Vent Connection
<input type="checkbox"/> 302.7 Accessory Structures	<input type="checkbox"/> 305.4 Stairs/walking surfaces	<input type="checkbox"/> 502.1 Lavatory	<input type="checkbox"/> 603.3 Clearances
<input type="checkbox"/> 303 Pools/Enclosures	<input type="checkbox"/> 305.5 Handrails/guardrails	<input type="checkbox"/> 502.1 Kitchen sink	<input type="checkbox"/> 603.4 Controls
<input type="checkbox"/> 304 General Exterior	<input type="checkbox"/> 305.6 Interior Doors	<input type="checkbox"/> 503 Toilet Rooms	<input type="checkbox"/> 603.5 Combustion Air
<input type="checkbox"/> 304.2 Protective Treatment	<input type="checkbox"/> 305.7 Carbon Monoxide Alarms	<input type="checkbox"/> 504.1 Fixture maintenance	
<input type="checkbox"/> 62-2 Weeds/Debris	<input type="checkbox"/> 307.1 Handrails/Guardrails	<input type="checkbox"/> 505.1 Fixture connections	ELECTRICAL
<input type="checkbox"/> 304.3 Street Numbers	<input type="checkbox"/> 308.1 Interior Rubbish	<input type="checkbox"/> 505.2 Contamination	
<input type="checkbox"/> 304.4 Structural Members	<input type="checkbox"/> 309 Pest Elimination	<input type="checkbox"/> 505.3 Supply	<input type="checkbox"/> 604.1 Facilities Required
<input type="checkbox"/> 304.5 Foundation Walls	<input type="checkbox"/> 310 Lead Based Paint	<input type="checkbox"/> 505.4 Water heating	<input type="checkbox"/> 604.3 System Hazards
<input type="checkbox"/> 304.6 Exterior Walls	<input type="checkbox"/> 402 Light	<input type="checkbox"/> 506.1 Sewer Connection	<input type="checkbox"/> 605.1 Installation
<input type="checkbox"/> 304.7 Roofs/Drainage	<input type="checkbox"/> 403 Ventilation	<input type="checkbox"/> 506.2 Sewage maintenance	<input type="checkbox"/> 605.2 Receptacles
<input type="checkbox"/> 304.10 Stairs/decks/balconies	<input type="checkbox"/> 404 Occupancy Limitations	<input type="checkbox"/> 507.1 Storm Drainage	<input type="checkbox"/> 605.3 Lighting Fixtures
<input type="checkbox"/> 304.13 Window/door frame	<input type="checkbox"/> 702 Means of egress		<input type="checkbox"/> 607.1 Duct System
<input type="checkbox"/> 304.13.1 Glazing	<input type="checkbox"/> 702.3 Locked doors		<input type="checkbox"/> 607.4 Cooling Supply
<input type="checkbox"/> 304.13.2 Openable window	<input type="checkbox"/> 704 Smoke detector		<input type="checkbox"/> 606 Elevators

Code Explanation(s):
 Unsafe Structure - Accessory structure shed/garage has been determined to be an unsafe structure and the condition constitutes such a hazard that it should be razed or removed. Unsafe determination prohibits its use for habitation until repaired with building permit requiring structural engineer plans for repair.
 *Demolish unsafe structure within 30 days of the date of written notice with permit or provide structural engineers report stating that the structure is repairable for further review to obtain required permits within 30 days of this written notice.

Notice: In accordance with City Code section 14-86 and Chapter 1, Part III of the Virginia Uniform Statewide Building Code, any person aggrieved by the City of Chesapeake's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the Local Board of Building Code Appeals. The application for appeal must be made within fourteen (14) calendar days of receipt of the notice. (Exception- Appeals for Dangerous Buildings must be made to the City Manager). An application is available on the City's website at <http://www.cityofchesapeake.net/government/City-Departments/Departments/Department-of-Development-and-Permits/forms.htm>

PUBLIC NOTICE

Please note that Section 38-8 of the Chesapeake City Code requires a rodent inspection prior to issuance of demolition permits.

This is a result of an ordinance adopted to abate rat infestation, which states that a building shall be free of rats or similar rodents prior to demolition. Should an inspection reveal the presence of rats/rodents, the site must be treated as required by the Department of Development & Permits. When it is determined the building is in compliance, the Department of Development & Permits will approve the issuance of a demolition permit.

For additional information concerning this amendment, please contact the Code Compliance Section of the Department of Development & Permits by phoning (757) 382-6378.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 WILLIAM J. LINDSEY
 MARIJORIE A. LINDSEY
 2475 STRAWBERRY LANE
 CITIESAPEAKE, VA 23324



9590 9402 3737 7335 0906 10

2 Article Number (transfer from service label)

7027 0530 0000 2512 5318

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 X *W. W. Lindsey* Agent

B. Received by (Printed Name)
 P. W. Lindsey Addressed

C. Date of Delivery
 5 29 14 Yes

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Priority Mail Express®
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail™
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Collect on Delivery Restricted Delivery and Restricted Delivery	<input type="checkbox"/> Signature Confirmation™
	<input type="checkbox"/> Restricted Delivery

Domestic Return Receipt

Return of Service

CITY OF CHESAPEAKE DEVELOPMENT AND PERMITS vs KAREN LINDSEY

Case #: 70170530000025125318

Paper Type: Notice

Court Date:



Name: LINDSEY, KAREN

Address: 2445 STRAWBERRY LN
Chesapeake, VA

Date Served: 3/30/2018 11:26:49 AM

Type of Service: Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above.

Note:

WW180329056

Serving Officer: Deputy M. Elkins

For: Jim O'Sullivan, Sheriff

4



Development and Permits Department
RECEIPT OF PAYMENT

Date: 04/10/2018

Receipt # 532331

Paid By:

KAREN LINDSEY
2445 STRAWBERRY LN
CHESAPEAKE, VA 23324-3113

Paid

Record Description	Address	Lot #	Fee Description	Amount
BLD-APPEAL-2018-00302	2445 STRAWBERRY LN		Building Appeal Application Fee	\$25.00
			Total	\$25.00

Payment Type:	Identifying #	# of Transactions	Amount
Money Order	17-738850712	1	\$25.00
		Total	\$25.00

BALANCE DUE

\$0.00

Collected By: DWARE

1687 17

Department of Development and Permits
Attention: John T. King, III
Post Office Box 15225
Chesapeake, Virginia 23328

Reference: 2445 Strawberry Lane - 1410000005030

Dear Sir:

I herewith appeal the decision of the Code Official on the above-referenced property. The grounds for appeal are:

 /
 /

The Property Maintenance Code has been misapplied to my property. Please explain below.

The Code Official has erroneously refused to grant a modification to the provisions of the Property Maintenance Code covering the manner of maintenance or use of the materials to be used in the maintenance or repair of that building or structure. Please explain below.

Additional Comments/Explanations:

Review phone call + Email w/ MR Tate (Owner)

I, or my agent, will appear before the Board of Building Code Appeals when notified of the time and place. Enclosed is my application fee of \$25.00 payable to the City of Chesapeake, Virginia.

Owner

Other

Karen Lindberg
Signature

April 10, 2014
Date

2445 Strawberry Lane POB # 5481
Ches, VA 23324
Address

757-267-0299
Contact Phone Number

Department of Development & Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

April 26, 2018

Karen Lindsey
2445 Strawberry Ln
Chesapeake, VA 23324-3113

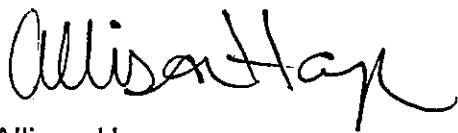
RE: Appeal – 2445 Strawberry Lane
Real Estate Parcel Number 1410000005030

Dear Ms. Lindsey:

We have received your request for appeal of the Notice of Unsafe Structure (Demolition) sent regarding the above noted property. Please be advised your appeal will be heard at the next scheduled meeting for the Local Board of Building Code Appeals, Wednesday, May 16, 2018. This meeting will be held at the Chesapeake Central Library at 5:30pm in the large conference room on the first floor of the building.

If you have any questions, please call me at 382-6466.

Sincerely,



Allison Harper,
Secretary

C: Patrick M. Hughes, Building Official
John King III, Code Official

Department of Development & Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

May 18, 2018

Karen Lindsey
Po Box 5481
Chesapeake, VA 23324

RE: 2445 Strawberry Lane – May 16, 2018 Appeals Board Rulings for Case 18-02

Dear Ms. Lindsey:

Attached please find the signed ruling for Case 18-02 from the May 16, 2018 meeting of the Local Board of Building Code Appeals.

If you wish to appeal the decision of the Local Board of Building Code of Appeals, you may appeal to the State Technical Review Board. Information regarding appeals may be found at <http://www.dhcd.virginia.gov/index.php/va-building-codes/building-and-fire-codes/appeals.html>.

The application must be submitted to the State Technical Review Board within 21 calendar days of receipt of the decision. Failure to submit an application for appeal within the 21 calendar day time limit will constitute an acceptance of the City of Chesapeake Board of Building Code Appeals decision. If you have any questions for the Technical Review Board, you may contact Vernon.Hodge@dhcd.virginia.gov or Travis.Luter@dhcd.virginia.gov, who are the contacts for that program.

If you have any questions, please call me at 382-6466.

Sincerely,



Allison Harper,
Secretary

Attachments

Results to Citizen letter for 18-02

LBBCA Decision Letter to Appellant

Chesapeake
VIRGINIA

Department of Development & Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

May 21, 2018

Karen Lindsey
Po Box 5481
Chesapeake, VA 23324

Staff Note: This letter was provided by the City of Chesapeake. The same letter was provided by the Appellant and is on the previous page; however, the dates of the letters are different so I included both letters in the agenda package.

RE: 2445 Strawberry Lane – May 16, 2018 Appeals Board Rulings for Case 18-02

Dear Ms. Lindsey:

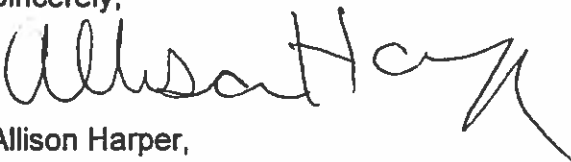
Attached please find the signed ruling for Case 18-02 from the May 16, 2018 meeting of the Local Board of Building Code Appeals.

If you wish to appeal the decision of the Local Board of Building Code of Appeals, you may appeal to the State Technical Review Board. Information regarding appeals may be found at <http://www.dhcd.virginia.gov/index.php/va-building-codes/building-and-fire-codes/appeals.html>.

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If you have any questions, please call me at 382-6466.

Sincerely,



Allison Harper,
Secretary

Attachments

Results to Citizen letter for 18-02

*"The City of Chesapeake adheres to the principles of equal employment opportunity.
This policy extends to all programs and services supported by the City."*

Department of Development & Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

**LOCAL BOARD OF BUILDING CODE APPEALS RULING
APPEAL CASE NUMBER 18-02**

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

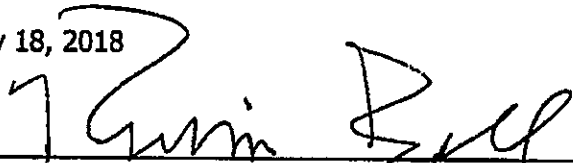
WHEREAS, appeal 18-02 was filed April 10, 2018 by Karen Lindsey, the resident of 2445 Strawberry Lane and also the Executor of the Estate of William and Marjorie Lindsey, located in the City of Chesapeake, Virginia and brought to the attention of the board of appeals; and

WHEREAS, a hearing was held on May 16, 2018 to consider the aforementioned appeal; and the board has deliberated the matter,

NOW THEREFORE, be it resolved in the matter of Appeal No. 18-02, Karen Lindsey vs. City of Chesapeake Department of Development and Permits, the board hereby upholds the Notice of Violation issued on March 26, 2018 determining that the building is unsafe for human occupancy under the Virginia Uniform Statewide Building Code and has given the property owner/Executor of the Estate a 30 day timeframe from the date of the hearing, May 16, 2018, to obtain an engineer's report and contractor's agreement, an additional 60 days for the purchase of the required permits from the Development and Permits Department, and an additional 180 days for the structure to be repaired, inspected and obtain a new Certificate of Occupancy from the Development and Permits Department. Any entry of the property without a waiver of liability(s) issued by the City (John T. King, III, Code Official or his designee) is prohibited by law. If a Certificate of Occupancy is not issued or the property is not demolished by the Appellant, Ms. Lindsey, within 270 days of the date of this decision, the City of Chesapeake will perform the demolition of the structure at 2445 Strawberry Lane WITHOUT FURTHER NOTICE to the Board or Appellant.

Date: May 18, 2018






Signature


Kevin Ball, Chairman of Local Board of Building Code Appeals

*"The City of Chesapeake adheres to the principles of equal employment opportunity.
This policy extends to all programs and services supported by the City."*

CHESAPEAKE LOCAL BOARD OF BUILDING CODE APPEALS APPEAL Application #BLD-APPEAL-2018-00002

MEETING ATTENDANCE ROSTER
 Wednesday May 16, 2018 –Central Library
 First Floor Conference Room @ 5:30PM

ATTENDEE (Initials)	REPRESENTING	EMAIL
 Kevin T. Ball	LBBCA	kball@rmm.com
Edwin A. Coyner III	LBBCA	edcoyner63@gmail.com
 Murray R. Goodwin III	LBBCA	mrgoodwinIII@aol.com
 Robert C. Hudson III	LBBCA	rhudson@BGI-GC.com
 Gerald F. Martin	LBBCA	gfm@mandma.com
 Eric Stichler	LBBCA	estichler@bgi-gc.com
Steven D. Allen	LBBCA	redtr6man@cox.net

City Staff and Appellants

Allison Harper - Development & Permits

John King O.P.P.

Karen Lindsey

Meredith Jacobi - Asst. City Attorney

D&P 2ND FLOOR PO BOX 5481 23324 HH

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY												
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <i>Pepper Wilson</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Pepper Wilson</i></p> <p>C. Date of Delivery <i>5-25-18</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No</p>												
<p>1. Article Addressed to: <i>Karen Lindsey PO BOX 5481 Chesapeake, VA 23324</i></p>													
<p>2. Article Number (Transfer from service label) <i>7017 3380 0000 3201 6270</i></p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> </table> <p>1 Mail 1 Mail Restricted Delivery (300)</p>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®												
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™												
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery												
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise												
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™												
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery												
<p>9590 9402 3737 7335 0905 73</p>													
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>	<p>Domestic Return Receipt</p>												

HH

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

PROHIBITED FOR USE

Certified Mail Fee \$

Extra Services & Fees (check box, add fee as appropriate)

<input type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$

Postage \$

Total Postage and Fees \$

Sent To *Karen Lindsey*
 Street and Apt. No., or PO Box No. *PO BOX 5481*
 City, State, ZIP+4® *Chesapeake, VA 23324*

PS Form 3800, April 2015 PSN 7530-02-000-3047 See Reverse for Instructions

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

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

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

Appeal Application requested by Review Board staff for clerical purposes. Appeal received June 15, 2018 via email in the next three pages

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

KAREN LINDSEY - (757) 287-0299 - k.lind@gmail.com

2445 STRAWBERRY LANE CHESAPEAKE, VA 23324

Mailing Address: P.O. Box 5481 CHESAPEAKE, VA 23324

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

Dept. of Development and Permits - 306 Cedar Rd, P.O. Box 15225 - Chesapeake, VA 23328-5225

John King Code Official Email Address: jking@cityofchesapeake.net - 757-382-8976

Michele Theobald Code Enforcement Administrator Email Address: mtheobald@cityofchesapeake.net - 757-382-8374

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 12th day of July, 2018, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

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

Signature of Applicant: Karen Lindsey

Name of Applicant: KAREN LINDSEY

(please print or type)



Luter, William <travis.luter@dhcd.virginia.gov>

Appeal to Technical Review Board

Karen Lindsey <k.lex.lind@gmail.com>
To: Vernon.Hodge@dhcd.virginia.gov
Cc: Travis.Luter@dhcd.virginia.gov

Fri, Jun 15, 2018 at 5:59 PM

Technical Review Board State of Virginia

This email is to inform the Technical Review Board that I would like to appeal the decision made by the Local Board of Building Code of Appeals and the official reporting from the Department of Development and Permits. The main thing I am appealing is the timeframe of expectancy for displaced victims. I do not know how this appeal process to the state works so I am contacting you via email. If there is any other application process necessary for this appeal please provide me with that information.

The information following will provide you with the details of what has transpired thus far.

On May 16, 2018, a meeting with the Local Board of Building Code of Appeals took place. This appeal was mandatory to put a stop to the Department of Development and Permits from demolishing the property at 2445 Strawberry Lane, Chesapeake, VA 23324. There was a house fire at the residence on the morning of January 25, 2018. This fire made breaking news around 5am, everyone got out of the home unharmed, however three people were displaced from the fire. The Circuit Court was called to clearly let it be known that the property was not abandoned. The City of Chesapeake was already aware that a fire had occurred due to the breaking news coverage and there was no record of any action being taken against the property. According to the Circuit Court, the City of Chesapeake was not going to do anything; the property would just sit there. Unbeknown to me, the Department of Development and Permits had put plans in motion immediately after the fire to demolish the home; documents were stapled to the plywood on the garage door, letters mailed out to apparent lienholders, the house was placed on the demolition list for March 2018, and within 30 days or less the home was going to be demolished to the ground. This plan by the Department of Development and Permits became apparent when driving past the home. The following week phone calls were made to Department Head, Michele Throchmorton, and the Director, Jay Tate, in addition to emails exchanges with Mr. Tate asking what was the city trying to do and why was this taking place. I acknowledged to everyone I have been in contact with that I totally disagree with everything that has transpired in reference to the property on Strawberry Lane. The responses I received was if you do not agree then the only thing to do in appeal.

This methodology of demolishing displaced victims homes immediately after a fire without having any direct contact first with the representative of the property is just plain cruel and unethical. Did anyone take into consideration what the victims have endured? First of all, everyone is traumatized by having to escape a fire and there was not even a sympathetic gesture from anyone in the Department of Development and Permits, just letters sent out to destroy the property, like we never at all existed. The Department of Development and Permits took off running regarding the demolition like we all had perished in that fire. It did not matter what anyone's wishes were for that property; orders were given by John T. King, III to bulldozer

that home. How much time is a reasonable amount of time in order for displaced victims to start our lives over again? Did anyone at the City or State level take into consideration that the victims need a temporary place of residency? Life as we once knew it to be is gone forever; the next step is to make plans for transitioning to a brand new life in addition to coordinating a plan to rebuild our home.

I followed the steps through Probate to have legal authority to make decisions on the property. Now, there are additional responsibilities I also must follow: getting a new Tax ID number for the estate property, reporting of inventory of accounts, trying to locate the original plans for the property, if can't be found having to draw up new plans, and there is a financial responsibility as well.

As the Executor of the Estate, I intend to fight for as long as necessary to protect what is left of my parent's home; the future plan is to rebuild. There is no way that a home can be rebuilt the correct way without proper research and planning and this cannot be done in 30 days. Building a home from the ground up takes an extensive amount of time; I know this because I was there when the original plans were being established to build the house back in 1980 and 1981.

As a Chesapeake resident who was born and raised in that community where the fire took place, I also am concerned about safety and protection. At the Local Board of Building Code of Appeals meeting, I made it perfectly clear that I was not at all fearful of entering my home in the state it is in today; that home is sound and will not collapsed upon entry. The framework for the structure still remains which tells me that if it was not my duty to rebuild this home then the entire house would have burned completely down; reduced to nothing but ashes. I have a waiver to sign and return to the Department of Development and Permits next week indicating that I will be entering my home at will holding no one liable in the event of injury or death. Would I sign such a document if I was not confident about the structure withstanding all attacks that has come up against it?

This appeal to the state, is for an extension of a 120 days to review all of the documentation sent by the Department of Development and Permits regarding compliance codes in the City of Chesapeake and the motion made by the Local Board of Building Code of Appeals for reports from structural engineers providing estimates of repairs. Also, I am seeking an amended time frame for the completion of the rebuilt home to be 365 days. This extra time allotted will give me the additional time needed to focus also on relocating to a temporary placed of residency so I can be in one establishment while overseeing this massive home rebuilding project.

As I mention to the Local Board of Building Code of Appeals, I do have a degree but not in the field of Engineering. I called 757-382-8976 on Tuesday June 5th and left a voicemail for Allison Harper and John T. King, III that I was granting an extension but as of date, I have not received a phone call or email back from either of them. The document mailed certified of the Local Board of Building Code of Appeals motion was signed for on May 25th and it stated that contact must be made within 21 days from the date of receipt to appeal to the state. So, today, June 15th, at the local library, I am appealing to the Technical Review Board to review this entire demolition process.

The steps taken to place my home on the demolition list initially after the fire is being questions and now I am seeking clarity from the State. I am well aware that a decision must be made regarding the structure because it cannot remain as it is forever; demolition is not an option of mine. The Executor of the Estate should have not been put in this position to have to battle to save this home prior to giving my response on how I planned to proceed with the property

moving forward. I am following the protocol set in motion by the Department of Development and Permits of the next step in this process after the Local Board of Building Code of Appeals by appealing to the State Technical Review Board. If at any point you need to reach me via phone, my cell number is 757-287-0299; please leave a detail message if no answer. Also, my mailing address at this time is PO Box 5481, Chesapeake, Virginia 23324.

Karen Lindsey
Executor of the Estate
2445 Strawberry Lane
Chesapeake, VA 23324

Documents Submitted By Karen Lindsey

(Page left blank intentionally)

CERTIFICATE/LETTER OF QUALIFICATION
COMMONWEALTH OF VIRGINIA
VA. CODE §§ 6.2-893, 6.2-1171, 6.2-1365, 6.2-1367, 6.2-2011, 6.2-506, 6.2-607

Court File No. 180000154

Chesapeake Circuit Court

I, the duly qualified clerk/deputy clerk of this Court, **CERTIFY** that on February 27, 2018

DATE

Karen Gaynell Lindsey,

NAME(S) OF PERSON(S) QUALIFYING

duly qualified in this court, under applicable provisions of law, as **Executor** of the estate of

Marjorie A Lindsey

DECEASED MINOR INCAPACITATED

The powers of the fiduciary(ies) named above continue in full force and effect.

\$344,000.00 bond has been posted.

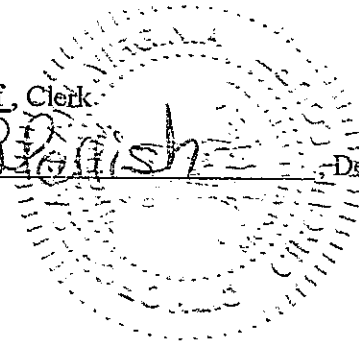
Given under my hand and the seal of this Court on

February 27, 2018

DATE

Alan P. Krasnoff, Clerk

by Stacey L. Parish Deputy Clerk



Release of Liability Statement

I, KAREN LINDSEY, of 2445 STRAWBERRY LN PO BOX 5481 CHES. VA 23324
[Print name] [Print home address]

for myself and my heirs, executors, administrators and assigns, hereby release, indemnify and hold harmless the City of Chesapeake, Virginia ("City"), from all liability for any and all risk of damage or bodily injury or death that may occur to me (including any injury caused by negligence), in connection with my entry into the structure at 2445 STRAWBERRY LANE CHES. VA 23324, in Chesapeake, VA

January 25, 2018, from 1/25/18 to 1/25/20
[Print address of unsafe structure] [Print date and time frame of entry]

I understand and acknowledge that this structure has been posted unsafe by the City and that I enter this structure at my own peril.

Further, I expressly agree that this release, waiver, and indemnity agreement is intended to be as broad and inclusive as permitted by the State of Virginia, and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

I have no known physical or mental condition that would impair my capability to participate fully, as intended or expected of me.

I have carefully read the foregoing release and indemnification and understand the contents thereof, and sign this release as my own free act.

Karen Lindsey, KAREN LINDSEY
Signature Print

July 12, 2018
Date

(757) 287-0299
Phone Number

_____/_____
City employee initials Date



Chesapeake

3 people displaced in Chesapeake house fire

By: Kevin Green

Updated: Jan 25, 2018 05:28 AM EST



Credit: Chesapeake Fire Department

CHESAPEAKE, Va. (WAVY) -- Firefighters responded to a house fire early Thursday morning in Chesapeake.

Fire department officials tweeted Thursday morning that the fire was a house on Strawberry Lane. A photo posted to Twitter showed smoke rising from the top of the house.

Lt. Tony Barakat tells WAVY.com firefighters were called to the scene just before 5 a.m. A fire was found in the attic on the backside of the house.

Crews had the fire under control at 6:10 a.m.

Barakat says crews searched the house, but no one was found inside. Three people who live at the house have been displaced.

Stay with WAVY.com for the latest developments.

Copyright by WAVY - All rights reserved



Karen Lindsey <k.lex.lind@gmail.com>

2445 Strawberry Lane7 messages

Jay Tate <jtate@cityofchesapeake.net>

Fri, Mar 23, 2018 at 4:50 PM

To: "k.lex.lind@gmail.com" <k.lex.lind@gmail.com>

Cc: "Sandra R. Witherow" <switherow@cityofchesapeake.net>, Michele Throckmorton <mdthrockmorton@cityofchesapeake.net>

Good evening Ms. Lindsey,

Pursuant to our conversation March 22, 2018, I am providing this letter to address your questions and provide suggestions on correcting the defects to the referenced building:

I have paraphrased your questions in italics and our answers follow:

1. *Why did the City inspect my house and determine it was an unsafe building?*

Due to a structure fire that occurred at 2445 Strawberry Lane on January 25, 2018, the Department of Development and Permits was alerted by the Fire Department to conduct a building inspection for building safety. The inspection occurred on January 29, 2018 and the building was found to have notable damages that rendered the structure unsafe for habitation.

2. *What right did the City have to enter the building without my consent?*

In reviewing this matter with the inspector, we determined that he used a previous inspection report as a template in reporting the inspection of this building. The following quote from the report was erroneously included:

There was a cleaning/restoration company on site. I identified myself to them and displayed my city credentials. I asked for permission to enter the structure and they allowed me entry. I found significant fire damage to the rear area at the "C/D" portion."

The condition at the property was so deteriorated at the time of inspection that its status as unsafe for human occupancy under the Uniform Statewide Building Code was apparent from viewing the exterior of the structure; entry was not necessary to make such a determination.

The City Attorney's Office was consulted regarding the authority the inspector had to enter the structure for inspection without your consent. Even if the inspector had entered your property in this circumstance, the City's position is that the inspector entered the property pursuant consent by a third party with common authority over the premises.

3. *Where does the building code say that the City can dictate how long I have to restore the building?*

Sections 104.5.4.2 and 105.4 of the 2012 Virginia Maintenance Code (VMC) requires the City Code Official to describe the violations and provide a time period within which they should be corrected. Failure to provide a timeline would have been unlawful, but reasonable extensions for diligently performed work can be arranged.

4. *Why did you mail notices and post them on my building instead of calling me?*

The City of Chesapeake is legally obligated to provide notice of building code violations with specific content, provided in a specific manner. Section 105.5 of the VMC requires that the notice be mailed to the owner and posted on the structure. A phone call would have been legally insufficient. In short, the City was required by law to send your notice in this manner.

You explained your intent to restore the building the building yourself. That option is available within specific parameters that satisfy building code requirements. This option includes the following steps:

1. A structural engineer must evaluate the building and provide a report detailing the methods to correct the fire damaged building.
2. An agreement must be executed with the City detailing milestones and a schedule for restoring the building. Attached please see an example of a typical agreement.
3. A building plan and permit must be acquired by a licensed contractor for repair of all damages, consistent with the engineer's report.
4. Completion of the milestones must occur on schedule, otherwise the City will need to proceed with demolition of the unsafe building.

In our title search for the property and reviewing utility records, your name was not identified as a responsible party for the property. You recently contacted our department to inform us that you are a resident to the property, therefore, we will be providing you with a new Notice of Unsafe Structure letter. This letter will contain the timeframe to which you should have a permit to repair the building. Should you need additional time to obtain an inspection by a structural engineer and estimate of repair from a licensed contractor, additional time can be granted with an agreement (see 2 above).

If you have any additional questions please contact me.

J.B. Tate, P.E.

Director of Development and Permits

City of Chesapeake

306 Cedar Rd 3rd Floor

Chesapeake VA 23322

757-382-6263

 **MOU DRAFT VERSION.DOC**

Karen Lindsey <k.lex.lind@gmail.com>
To: Jay Tate <jtate@cityofchesapeake.net>

Fri, Mar 23, 2018 at 5:04 PM

Thank you for this information. I am submitting this documentation to be reviewed by my attorney. You will be contacted soon.

Jay Tate <jtate@cityofchesapeake.net>
To: Karen Lindsey <k.lex.lind@gmail.com>
Cc: "Meredith H. Jacobi" <mjacobi@cityofchesapeake.net>

Fri, Mar 23, 2018 at 5:13 PM

You can tell your attorney that Meredith Jacobi represents us, for them to contact.

Sent from my Verizon Wireless 4G LTE DROID

Karen Lindsey <k.lex.lind@gmail.com> wrote:

Thank you for this information. I am submitting this documentation to be reviewed by my attorney. You will be contacted soon.

Karen Lindsey <k.lex.lind@gmail.com>
To: Jay Tate <jtate@cityofchesapeake.net>

Fri, Mar 23, 2018 at 5:52 PM

Thank you for this information as well. As I indicated on Thursday, March 22, 2018, I am appealing all of your Code Inspector's reports via written documentation that my property is "Unsafe."

[Quoted text hidden]

Jay Tate <jtate@cityofchesapeake.net>
To: Karen Lindsey <k.lex.lind@gmail.com>
Cc: "Sandra R. Witherow" <switherow@cityofchesapeake.net>, Michele Throckmorton <mdthrockmorton@cityofchesapeake.net>

Mon, Mar 26, 2018 at 11:58 AM

Ms. Lindsey, I previously advised you that we would be sending you a formal notice of violation(NOV), based on your indication you lived there and are responsible for the building. The NOV will have the instructions for an appeal, consistent with City Code requirements. The NOV will also provide a contact for any questions about the appeal process.

J.B. Tate, P.E.
Director of Development and Permits
City of Chesapeake
306 Cedar Rd 3rd Floor
Chesapeake VA 23322
757-382-6263

[Quoted text hidden]

Karen Lindsey <k.lex.lind@gmail.com>
To: Jay Tate <jtate@cityofchesapeake.net>

Fri, Mar 30, 2018 at 10:13 AM

Mr. Tate,

I contacted you, the Director, notifying you that this is an official complaint against your Code Officials and that I disagree with their assessment and the methods used. So, why would I proceed with contacting Mr. King? I need the Director's name, phone number, and email address who oversees the appeal process.

Also, please provide me with a listing of the Property Maintenance Code along with photographs referencing sides (A, B, C, D, etc.) that you are stating in the NOV applies to my property.

I am interested in moving forward and working towards resolving this matter in a reasonable time frame making sure that my rights are not being violated in any way.

Thank You,

Karen Lindsey
[Quoted text hidden]

Jay Tate <jtate@cityofchesapeake.net>

Mon, Apr 2, 2018 at 6:15 PM

To: Karen Lindsey <k.lex.lind@gmail.com>

Cc: John King <JKING@cityofchesapeake.net>, "Sandra R. Witherow" <switherow@cityofchesapeake.net>

Dear Ms. Lindsey,

You have asked for the contact information of the director who oversees the appeal process. The person who administers (oversees) the appeals to the Local Board of Building Code Appeals (LBBCA) is the City's Code Official under the Virginia Maintenance Code. Mr. King is the City's Code Official, which is why the NOV instructs you to submit the appeal form and application fee of 25.00 to his office, where the Recording Secretary for the LBBCA is also located. In order to process your appeal, you must complete the form and fee by the deadline, or the City will take the position that the appeal period has expired and the assessment by the Code Official stands. If you file an appeal, a hearing before the Local Board of Building Code Appeals will be scheduled and you will have the opportunity to present your position concerning the property and the actions of the Code Official to them. You may also submit any other documentation or statements that you would like for the Local Board of Building Code Appeals to review in advance to the Code Official, and he and the Recording Secretary for the LBBCA will compile a packet to provide the LBBCA that contains both yours and the City's supporting documentation. You have asked for copies of photographs of the exterior of the structure. Please see attached. Side A faces the street, Side C is the back of the house, and sides B and D are the other sides of the house. The codes pertaining to the notice of violation can be found in the Virginia Maintenance Code at <https://codes.iccsafe.org/public/document/VMNC2012>.

You have also indicated that you are interested in resolving this matter in a reasonable timeframe. You may choose to pursue one or more of the following options:

1. Repair the structure. If you choose to repair the structure, several documents will be required in order purchase the required building permits prior to beginning work. A Structural Engineer's report that details the required structural repairs will be needed. This report shall include the estimated cost of the repairs. In addition, two (2) Class A Contractor's reports will be required detailing the structural and nonstructural repairs and estimated costs that will result in compliance with the Virginia Uniform Statewide Building Code (VUSBC). The third Item that will be required in order to purchase permits will be a memorandum of understanding (MOU) between the property owner and the City. This MOU will need to detail timelines for completion and inspection of repairs.
2. Demolish the structure. If it is determined by the property owner that demolition of the structure will be pursued, the following criteria must be completed.
 - a. Request a rodent free inspection from the Department of Development and Permits. There is a \$25 fee

associated with a rodent free inspection.

b. Request utility release letters from all of the utility providers that supply the structure. Written releases must be submitted to the City with the application for a demolition permit.

c. Purchase the demolition permit and receive a final inspection upon completion of the removal of the structure.

3. The determination and notice of violation issued for the unsafe structure is authorized by the VUSBC, Virginia Maintenance Code as adopted by the City of Chesapeake. You may choose to appeal the notice of violation to the Local Board of Building Code Appeals (LBBCA). The form supplied to you within the Notice of Violation should be completed and submitted to the Code Official with the application fee of \$25, made out to the City of Chesapeake. The appeal documents must be submitted within 14 days of the date of the notice of violation. Since the notice of violation sent to you was dated March 28, 2018, the deadline for submittal and perfection of an appeal will be prior to close of business on April 11, 2018.

Please be aware that failure to respond and/or submit required documentation by the provided deadlines will result in action to have the unsafe structure demolished and removed. If you have questions about resolving the violations or processing an appeal, Mr. King can be reached at 757-382-6466.

J.B. Tate, P.E.
Director of Development and Permits
City of Chesapeake
306 Cedar Rd 3rd Floor
Chesapeake VA 23322
757-382-6263

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

From: Karen Lindsey [mailto:k.lex.lind@gmail.com]

[Quoted text hidden]

4 attachments



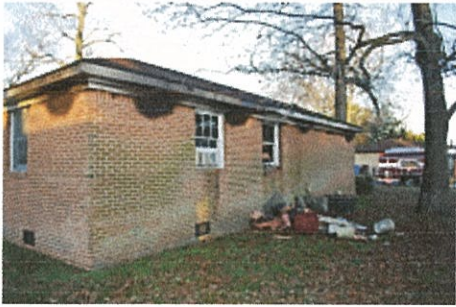
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**Memorandum of Understanding
Unsafe Structures DRAFT VERSION**

Address: 1234 Cedar Road
Parcel # 1000000000000

I am the owner or agent and have control of and authority over the above referenced property. To remedy the code violations on the property, I am requesting additional time to repair the structure on the property according to the attached document signed and dated **March 23, 2018**.

Without a written revision to this agreement, signed by an authorized City of Chesapeake Code Official, all reports, repairs, or demolition listed in the attached document will be completed on or before **June 23, 2018**.

I fully understand, agree and give my consent that if all requirements included on the attached document have not been totally completed and final inspections approved on or before **June 23, 2018**, the City of Chesapeake can proceed with the required notices of unsafe structure which could result in the demolition of the structure without further notice or liability for loss of property or value.

Signature _____ Date _____

Printed Name _____ Property Owner

Signature _____ Date _____

Printed Name _____ Agent (power of attorney)

Notary:

State of:
City/County of:

On _____ personally appeared before me _____

Whose identity I verified on the basis of _____,

Notary Public _____

My commission expires:

**Memorandum of Understanding
Unsafe and Dangerous Structures
Attachment**

Address: : 1234 Cedar Road
Parcel # 1000000000000

If the house structure is proposed to be repaired, the following requirements will be completed.

1. Structural engineer report and building permit for structural repairs must be obtained by **April 15, 2018.**
2. All structural repairs to primary structure house required to meet the Virginia Uniform Statewide Building Code shall be completed, inspected and approved prior to **June 23, 2018.**
3. All other inspections, to include an additional inspection by Code Compliance Building Maintenance Inspector for approved habitability of occupants, shall be completed by **June 23, 2018.**
4. Certificate of Occupancy (C.O.) is required to be issued by **June 23, 2018.**

Property owner or Agent Signature _____

Printed Name _____

Date _____

City Employee's initials _____









Search Keywords

> [City of Chesapeake, Virginia](#) > [Government](#) > [City Agencies, Departments, and Offices](#) > [Departments](#) > [Department of Development and Permits](#) > [Code Compliance](#) > April 2018 Demolition List

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- [Do I Need a Permit?](#)
- [Apply for a permit](#)
- [Get information about...](#)
- [Report...](#)

April 2018 Demolition List

Board-Ups

- 3506 Franklin Street
- 122 Grant Street
- 126 Jones Street
- 400 Battlefield Boulevard N.
- 611 Beech Street
- 728 Fentress Road
- 1011 Bowden Avenue

Dangerous Building

- 1113 Kimberly Court
- 405 Beauregard Drive

Demolitions

- Dominion Blvd S
- 935 Hill Street
- 829 Bells Mill Road
- 837 Bells Mill Road
- 841 Bells Mill Road
- 4912 Bainbridge Boulevard
- 3802 Bainbridge Boulevard
- 2509 Battlefield Boulevard
- 2445 Strawberry Lane
- 2361 Number Ten Lane
- 2256 Jolliff Road
- 220 Rainbow Lane
- 1400 River Birch Run S
- 128 George Washington Hwy S
- 0 Gum Road
- 1409 Martin Avenue
- 1411 Martin Avenue
- 1412 Martin Avenue
- 1413 Martin Avenue
- 2055 Maywood Street
- 2575 Narrow Street
- 3706 Bainbridge Boulevard
- 1408 Eagleston Arch
- 1612 Jackson Ave
- 2237 Delwood Road
- 2622 King Court
- 4133 Sunkist Road

← This Section

Department of Development and Permits Home

Building Permits and Inspections

Code Compliance

Property Maintenance Inspection

Landscaping

Demolition List

Development Advisories

Development Engineering and Construction

Fees

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Informational Bulletins

PFM

Zoning Administration

Floodplain Ordinance

FEMA FloodSmart Fact Sheet

Announcements

Department Calendar

Permit Applications

Forms

Demolition - Invitation for Bid

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Documents Submitted
By the City of Chesapeake

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Department of Development and Permits
Zoning Administration
306 Cedar Road
P.O. Box 15225
Chesapeake, Virginia 23328
Tel. (757) 382-8454

**Local Board of Building Code Appeals
May 16, 2018 5:30 PM
Chesapeake Central Library**

2445 Strawberry Lane

January 26, 2018 – An inspection was conducted on the burned residential structure at 2445 Strawberry Lane. The Fire Department informed the Department of Development and Permits of the hazard and requested an inspection. When the Inspector arrived, the structure was substantially deteriorated. Due to the deteriorated condition and the excessive storage of property within the structure, entering would have been hazardous. The Fire Department had, however provided extensive photographs depicting the condition of the structure. A small number of the photographs taken are included in this report. Photos, attachment #1.

March 22, 2018 – The following notes were placed in the file by the Code Compliance Manager: Michele Throckmorton

03-22-18- Rec'vd a call from the front counter indicating a lady wanted to speak to the person that is above the code compliance inspectors. She stated her name was Karen Lindsey and that the building inspector had no right to enter her property with the permission of a contractor that was on the property. She stated it was illegal and immoral for the city to give her this notice. She in turn also stated that the house is structurally sound, it is certainly not unsafe and she can live in there if she wants to. We have no business citing her property nor conducting such inspection. She asked for the names and phone numbers for Jay and Attorney's office and asked for the head attorney's name. She was shouting and not letting me speak other than to give her the names and numbers. She stated that we should have called her prior to inspection or putting these notices on the house because we should have googled her number or checked with the circuit court because they have her number. She warned that no one else should come on her property unless she is called first and informed of such action. Her number is 757-287-0299. I have emailed the assigned inspector and supervisor about the call.

March 22, 2018 - Revised inspection report was completed. Attachment #2

March 26, 2018 – Notice of Demolition mailed to owners. Attachment #3

April 10, 2018 – received the request for appeal. Attachment #4

The referenced structure was severely damaged by fire. An inspection revealed that structural members were damaged and missing in the roof structure. There was sufficient evidence that the structure is unsafe and cannot be occupied. The notice of violation forwarded to the owner provides options for demolition or repair. It also indicates that an agreement will be required with the City if the owner chooses to repair the structure. The structure is currently secured. An engineer's report describing the structural repairs required and a Class A contractor's report describing the repairs required to meet the Uniform Statewide Building Code, with cost estimates will be required in order to determine the extent and timeframes needed for required repairs. Once the documentation required is submitted, a Memorandum of Agreement between the City and the owner will be required. This agreement will spell out time frames and actions if the timeframes are not met within reason.

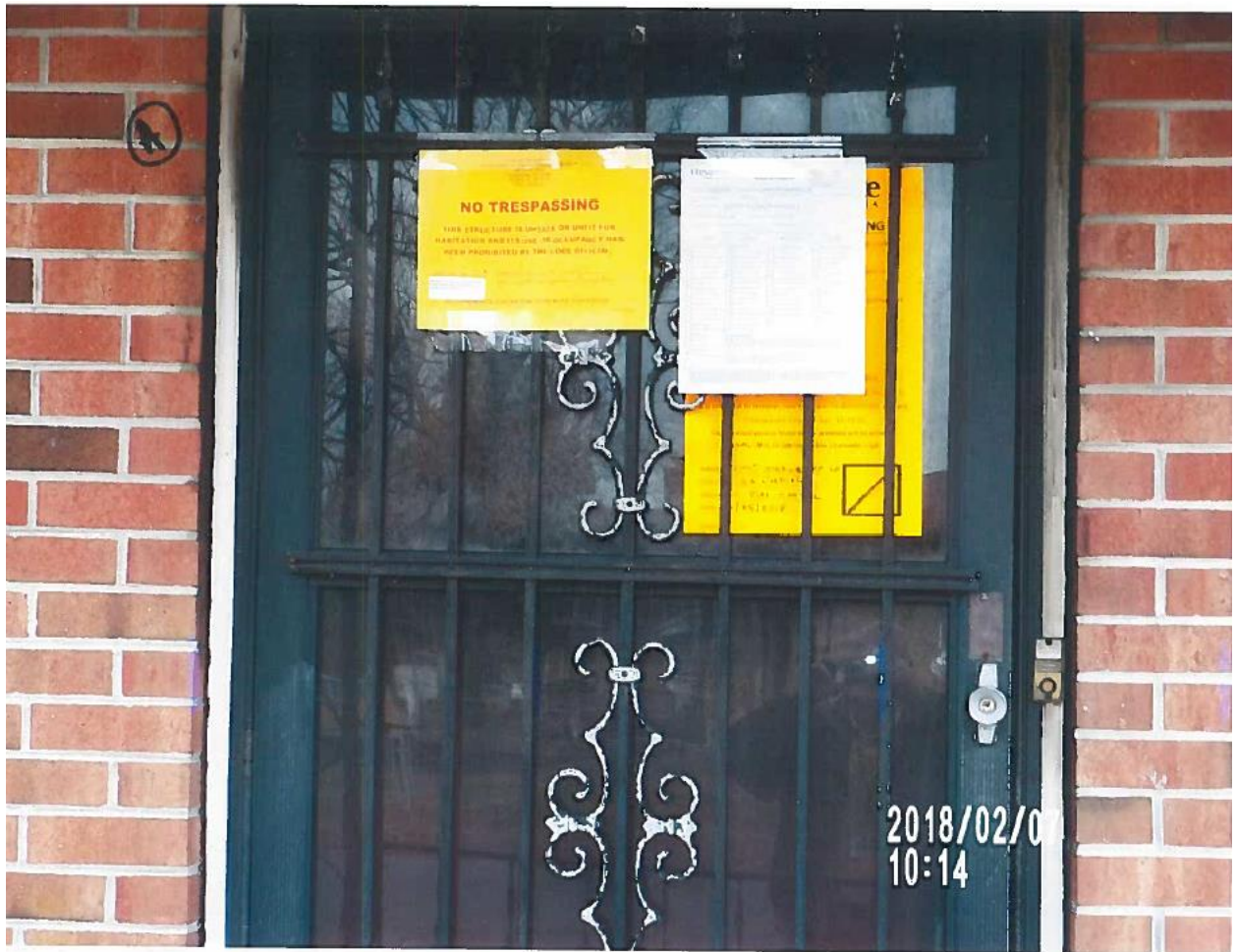
Staff requests that the Board uphold the notice of violation and stipulate a time frame for repairs or demolition.

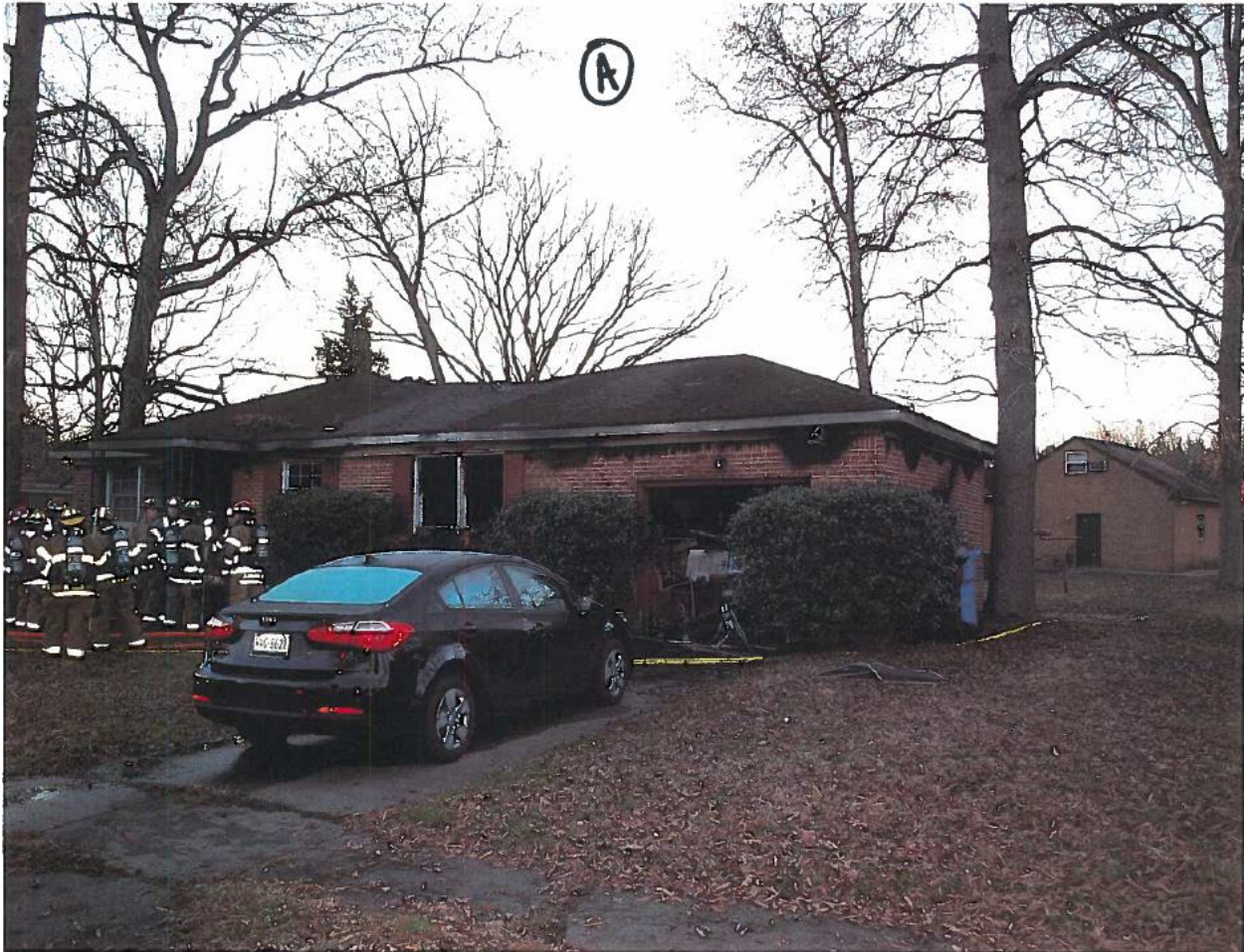
John King
5/2/18















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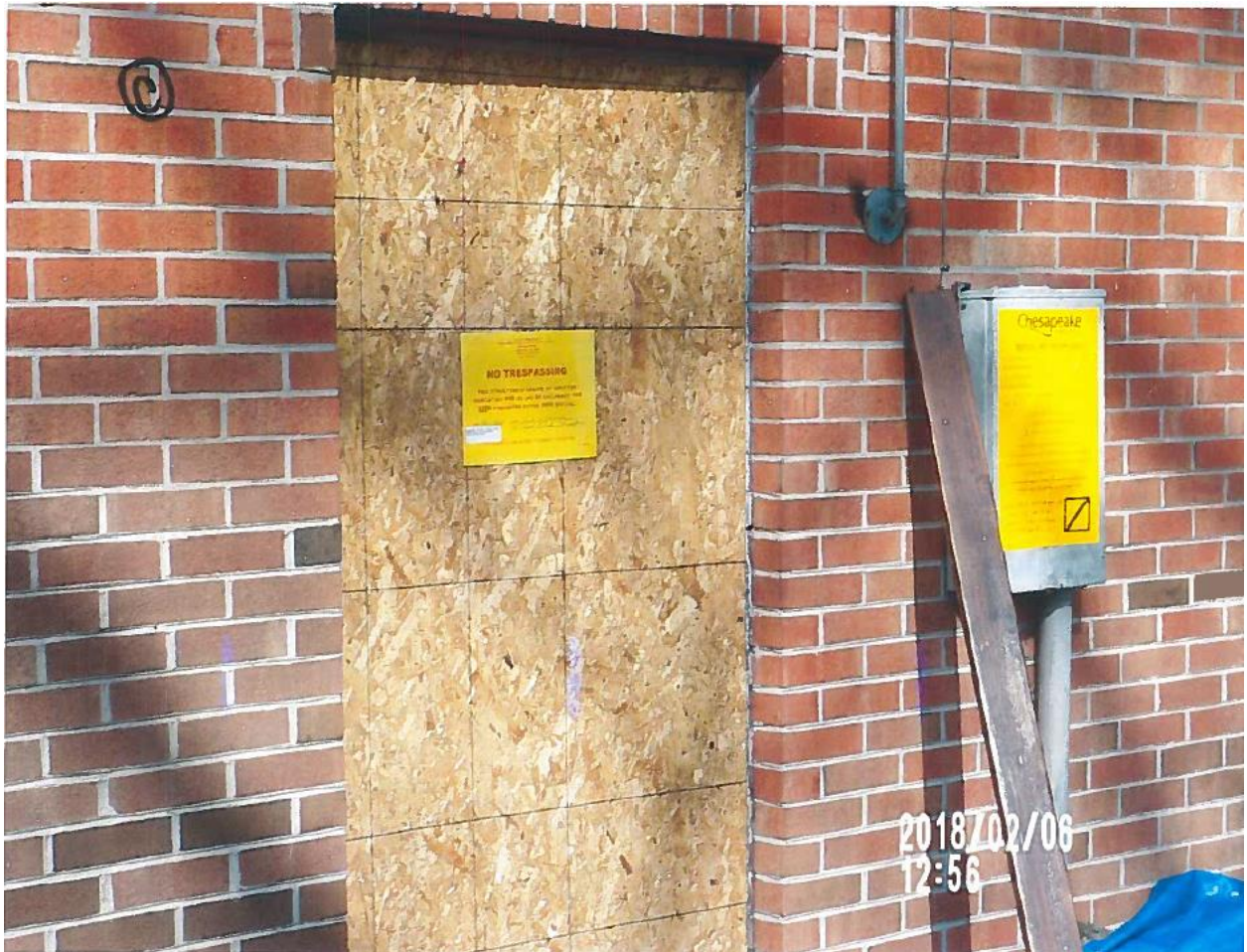
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Department of Development and Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

AMENDED BUILDING INSPECTION REPORT FOR UNSAFE STRUCTURES

SR Number: 18-00013703

Hazardous Structure Number:

Owner/ Agent: Lindsey William J & Marjorie A

Phone No. Unknown

Address: 2445 Strawberry Ln

Real estate Tax Value: \$171,700.00

Utilities Connected: City Water City Sewer Septic Tank Gas Electric

Legal Description:

Type of Structure: Residential Detached Structure Shed Other Structure
 Commercial Occupancy Use, Circle one of the following: R3

Size of the Building: Aprox. Sq..Ft. 1,339 Stories: one

Building is: Occupied Vacant Abandoned

Unsafe Building or Structure: Definition per Chapter 2, 2012 Virginia Maintenance Code:

An existing structure (i) Determined by the code official to be dangerous to the health , safety, and welfare of the occupants of the structure or public ,(ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated , structurally unsafe or of such faulty construction or unstable foundation that partial collapse or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.

Code for Unsafe Structures: Chapter 1 Section 105, 2012 Virginia Maintenance Code

Examination:

On 29 January 2018 at 1043 hours, this inspector arrived at the above referenced location. This location is in the City of Chesapeake, Commonwealth of Virginia. This location was involved in a residential structure fire on 25 January 2018 at 0454 hours.

The building is a single story brick veneer residence that was occupied at the time of the fire. According to city records the building was constructed in 1981. Taken into account the location within the City of Chesapeake, other buildings in the area and the appearance of the construction, it is my opinion that this time frame is correct.

The "A" side of the structure faces Strawberry Lane and is a typical residential of the time frame. There is significant fire damage to the roof area, which has been covered with tarps. The front shows fire and smoke damage at the windows and doors which have been boarded and secured. The "A" side also has a covered porch attached to it. (Pictures labeled A for TRB)

The "B" side of the structure shows fire and smoke damage at the windows which are secured by boarding. There is significant fire damage noted to the roof area, which has been covered with tarps. (Pictures labeled B for TRB)

"The City of Chesapeake adheres to the principles of equal employment opportunity. This policy extends to all programs and services supported by the City."

Page 2

The "C" side of the structure shows fire and smoke damage at the windows and doors which have been boarded and secured. The Dominion Power meter base is located near the "C"/"D" corner and the meter has been removed. There is significant fire damage noted to the roof area, which has been covered with tarps. (Pictures labeled C For TRB)

The "D" side of the structure shows smoke and fire damage which have been boarded and secured. The gas had been secured at the meter. There is significant fire damage noted to the roof area which has been covered with tarps. There is a vertical break in the brick veneer extending from the top of the window towards the roof line. (Pictures labeled D For TRB)

I spoke to Deputy Fire Marshal G. Orfield, Chesapeake Fire Marshal's Office about this fire. The fire is currently under investigation. During the investigation DFM Orfield took pictures of the interior which are relevant to the investigation and allowed this inspector to review the pictures. The pictures display significant damage to the roof and the supporting members. The pictures also display large piles of debris throughout the residence. (Pictures labeled I For TRB)

CONCLUSION:

After consultation with DFM Orfield and examination of the pictures, it is my opinion that this structure meets the definition of an unsafe structure. It is my opinion that due to this classification, a structural engineer be brought in for further examination should the owner want to make repairs. If the owner does not want to make repairs, it is my opinion that the structure be labeled for demolition.

Based upon these findings, I placed placards on the "A" and "C" side of the structure at 1047 hours.

Department of Development and Permits
306 Cedar Road
Post Office Box 15225
Chesapeake, Virginia 23328-5225
Tel. (757) 382-6018, 6890, 8424
Fax. (757) 382-8448

Inspector performing inspection:

Harold B. Phillips III, Code Compliance Inspector

Signature 

Date: 3-22-18

Code Official:

John King

Signature 

Date 3/23/18

Additional Documents
Submitted By the
City of Chesapeake

(Page left blank intentionally)

August 16, 2018

VIA Email

Virginia State Building Code
Technical Review Board
W. Travis Luter Sr.
Secretary to the Board
travis.luter@dhcd.virginia.gov

Office of the City Attorney
306 Cedar Road
Chesapeake, Virginia 23322
(757) 382-6586
Fax (757) 382-8749

**Re: 2445 Strawberry Lane, Chesapeake- Karen Lindsey- LBBCA Ruling 18-02
City of Chesapeake Position Statement**

Dear Secretary Luter and Members of the Board:

The City of Chesapeake and its Code Official ("City"), by counsel, respectfully submit this position statement in support of the Code Official's Notice of Violation dated March 26, 2018 (see "Proof of Notice Posting on Property, p. 1) and the decision of the Chesapeake Local Board of Building Code Appeals (LBBCA) dated May 21, 2018 (see "Local Board of Building Code Appeals Decision Letter). All references are to the labeled .pdf attachments provided to Secretary Luter via email from Michele Throckmorton on July 23, 2018, which are hereby incorporated into this statement by reference.¹

1. The Board does not have jurisdiction to hear this appeal and should dismiss it outright.

Section 106.8 of the 2012 Virginia Maintenance Code (VMC) states in relevant part, "The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the code official's decision. For appeals from a LBBCA, *a copy of the code official's decision and the resolution of the LBBCA shall be submitted with the application for appeal to the State Review Board*" (emphasis added). This language is mandatory and requires an application with the attachments to be submitted within 21 calendar days of receipt of the LBBCA decision. *Cf. Hershfield v. Town of Colonial Beach*, Record No. 0628-98-2, 1999 Va. App. LEXIS 34, at *2 (1999) (upholding the circuit court's decision to dismiss appeal of TRB decision under Va. Rule 2A:2 because Hershfield's notice of appeal was filed untimely); *Sours v. Va. Bd. for Architects, Prof'l Eng'rs, Land Surveyors & Landscape Architects*, 516 S.E.2d 712, 715 (1999) ("the timely filing of a petition for appeal of an agency decision is jurisdictional"). In compliance with the language of the VMC, the Virginia State Building Code Technical Review Board's (TRB) appeal application contains specific instructions for determining the filing date of the application.

Under the VMC, an emailed notification of the intent to appeal is not sufficient. According to the certified mail return receipt for the LBBCA decision, Ms. Lindsey, through her

¹ The City has handwritten highlighted labels for the benefit of the TRB within the documents. Please note that highlighted labels have been added for the easy reference of the TRB and were not part of the LBBCA record.

agent, received the LBBCA's decision on May 25, 2018 (see "Local Board of Building Code Appeals Decision Letter," p. 3). Ms. Lindsey should have submitted a completed application with the required attachments no later than June 15, 2018.² According to Mr. Luter's email of July 18, 2018 (attached as Exhibit A), Mr. Lindsey's appeal application was received on July 18, 2018, twelve days too late. Thus, Ms. Lindsey failed to submit her application within the time limit and has accepted the decision of the Code Official as a matter of law. For this reason, the City requests that this appeal be dismissed without a hearing.

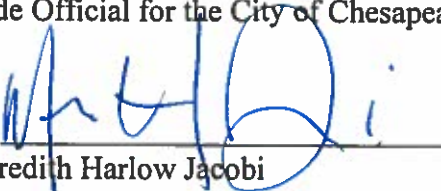
2. The City objects to consideration of ex parte communications by Ms. Lindsey, including her appeal application.

To date, the City has not received a copy of Ms. Lindsey's appeal application. Because of this ex parte communication and failure to serve the City, the City is prejudiced in its ability to respond to Ms. Lindsey's appeal. For this reason, the City requests that this appeal be dismissed without a hearing. If the Board is not inclined to dismiss the appeal on this basis, the City respectfully requests to be provided with a copy of Ms. Lindsey's appeal and the opportunity to respond to any allegations it contains.

3. Without waiving its Motion to Dismiss for failure to timely file the appeal, the City requests that the TRB uphold the decision of the LBBCA.

Should the TRB allow Ms. Lindsey's time-barred appeal to be heard, the TRB should uphold the decision of the LBBCA. Ms. Lindsey has actual notice of the Code Official's determination and the structure located at 2445 Strawberry Lane, Chesapeake, VA is an unsafe structure under the Virginia Maintenance Code. *See, e.g.* "Supporting Pictures to Inspection Report-First Set," pp. 8-13; Amended Building Inspection Report, p. 2. To date, Ms. Lindsey has neither provided a structural engineer's report to the Code Official indicating that the structure can be repaired, nor made any other lawful efforts to repair or demolish the structure.

Very truly yours,
John T. King, III
Code Official for the City of Chesapeake

By: 
Meredith Harlow Jacobi
Assistant City Attorney

CC via e-mail: Karen Lindsey, Appellant
John T. King, III, Chesapeake Code Official
Michele Throckmorton, Code Compliance Administrator

² Per the TRB's own form, the application could also have been timely if Ms. Lindsey had signed the Certificate of Service on June 15, 2018 and it was received within five business days of that date.

Meredith H. Jacobi

From: Michele Throckmorton
Sent: Monday, July 23, 2018 3:29 PM
To: Luter, William
Cc: Brown, Jeff (DHCD); John King; Meredith H. Jacobi; Pamela D. Witham
Subject: RE: Appeal to the Review Board for Karen Lindsey (Appeal No. 18-07)
Attachments: Local Board of Building Code Appeals Decision Letter.pdf; Proof of Notice Posting on Property.pdf; Staff Report for Local Board of Building Code Appeals.pdf; Supporting Pictures to Inspection Report- First Set.pdf; Supporting Pictures to Inspection Report- Second Set.pdf; Supporting Pictures to Inspection Report- Third Set.pdf; Amended Building Inspection Report.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Good Afternoon Mr. Luter,

Please see attached the additional information you have requested and inform if any additional information is required. Thank you.

Sincerely,

Michele Throckmorton

Code Enforcement Administrator
City of Chesapeake
Department of Development & Permits
Phone: 757-382-8374
mdthrockmorton@cityofchesapeake.net



From: Luter, William [mailto:travis.luter@dhcd.virginia.gov]
Sent: Thursday, July 19, 2018 9:06 AM
To: Karen Lindsey; John King; Michele Throckmorton
Cc: Brown, Jeff (DHCD)
Subject: Appeal to the Review Board for Karen Lindsey (Appeal No. 18-07)

All:

Karen Lindsey requested an appeal on June 15, 2018 via email. The Review Board does not have a policy requiring a request for appeal to be on the application; however, for clerical purposes Review Board staff requested Ms. Lindsey fill out an appeal application and submit it with her initial submittal. The appeal application and her initial submittal was received yesterday.

Attached is the information we received in the above-referenced appeal to the Review Board. Please send in any additional documents and/or photographs you have relative to the appeal by August 17, 2018 so Review Board staff may begin the processing of the appeal. If you submit any photographs, please correlate them to the applicable cited violations in your submittal.

Once we receive all the documents Review Board staff will determine how best to process the appeal. It would generally be either by drafting a summary of the appeal for the parties to review, or by conducting an informal fact-finding conference to meet with the parties to clarify the facts and issues in the appeal.

Please feel free to contact me if you have any questions or concerns.

W. Travis Luter Sr., C.B.C.O.

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

Additional Documents
and Written Arguments
Submitted by
the City of Chesapeake

September 28, 2018

VIA Email

Virginia State Building Code
Technical Review Board
W. Travis Luter Sr.
Secretary to the Board
travis.luter@dhcd.virginia.gov

Office of the City Attorney
306 Cedar Road
Chesapeake, Virginia 23322
(757) 382-6586
Fax (757) 382-8749

**Re: Appeal No. 18-07: 2445 Strawberry Lane, Chesapeake
City of Chesapeake Response to Staff Report**

Dear Secretary Luter and Members of the State Building Code Technical Review Board:

Please accept this response to the proposed Record and Review Board Staff Document (“Staff Report”) by the City of Chesapeake and its Code Official (“City”), by counsel. The City objects to the characterization of Ms. Lindsey’s June 15, 2018 email as an “application for appeal” in Suggested Summary of the Appeal number ten, and requests that the additional issue of whether the appeal should be dismissed for lack of jurisdiction be added to the Suggested Issues for Resolution by the Review Board.

1. The Board has the authority to rule on procedural issues, which should be included as such in the Staff Report.

Proceedings of the State Building Code Technical Review Board (TRB) are governed by the Administrative Process Act. Va. Code § 36-114. Under the Administrative Process Act, agencies, such as the TRB, rendering case decisions may “dispose of procedural requests.” Va. Code § 2.2-4020(C). The City’s request that the TRB dismiss this appeal due to the appeal application’s untimely filing is a procedural request. Furthermore, the timely filing of a petition for appeal of an agency decision is jurisdictional. *Sours v. Va. Bd. for Architects, Prof'l Eng'rs, Land Surveyors & Landscape Architects*, 516 S.E.2d 712, 715 (1999). Failure to comply with procedural rules renders an appeal subject to dismissal. *Mayo v. Dep't of Commerce*, 358 S.E.2d 759, 761 (1987). Because this issue involves the TRB’s jurisdiction to hear the merits of the appeal, it should be included in the Review Board Staff Document an “Issue for Resolution by the Review Board.” The City respectfully requests that it be added.

2. The sequence of the filings for this appeal is material and should be included in the Summary of the Appeal in detail.

The purpose of the time limit is not to penalize the appellant, but to protect the appellee, who needs to know when the litigation has ended and be able to act on that knowledge. *Sours*, 516 S.E.2d at 715. In order for an appeal application to be timely filed, all of the statutory requirements to perfect the appeal must be met. *Id.* The *Mayo* case has similar facts to this case. *Mayo* appealed an agency decision, issued on August 19, 1985, revoking her professional license, to a Virginia Circuit Court under the Administrative Process Act. 358 S.E.2d at 760. Virginia Supreme Court Rule 2A:4(a), at issue in the *Mayo* case, requires that a petition for

appeal in a proceeding for review brought pursuant to the Administrative Process Act be filed within 30 days after the notice of appeal has been filed with the administrative agency. 358 S.E.2d at 761. Mayo filed her Notice of Appeal with the agency on September 4, 1985, but she did not file her Petition for Appeal within 30 days of that date. *Id.* (Mayo filed for a hearing requesting the appeal deadline be extended on November 25, 2018 instead). The Virginia Court of Appeals found that, where the applicable procedural rules required the “petition for appeal and the record within the time provided,” failure to present those items was fatal to the appeal, and that this reasoning applied to Circuit Court proceedings as well. 358 S.E.2d at 761. The City sees no reason why it should not also apply to TRB proceedings.

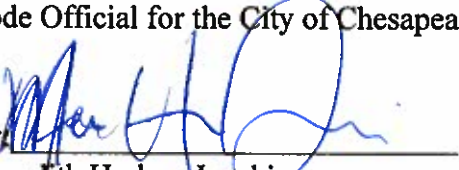
Because the *Mayo* case is analogous to the 2445 Strawberry Lane case, and the *Mayo* court relied on the timeline of filings provided by the applicant to reach its ruling, the timeline of filings provided by Ms. Lindsey should likewise be included in the Review Board Staff Document. Thus, the City requests that the Suggested Summary of the Appeal be corrected to add the following:

10. Lindsey received a copy of the local appeals board decision on May 25, 2018. Lindsey emailed her intent to appeal to the Review Board on June 15, 2018.

11. Lindsey executed an appeal application on July 12, 2018. The Review Board received the application on July 18, 2018.

An email is not an appeal application as required by section 106.8 of the 2012 Virginia Maintenance Code. The City objects to this characterization in the Staff Report, and the characterization of the appeal application as being filed “for clerical purposes.” The appeal application is a jurisdictional requirement. Thus, City respectfully requests that the record and Review Board Staff Document be revised as outlined above.

Very truly yours,
John T. King, III
Code Official for the City of Chesapeake

By: 
Meredith Harlow Jacobi
Assistant City Attorney

CC via e-mail: Karen Lindsey, Appellant
John T. King, III, Chesapeake Code Official
Michele Throckmorton, Code Compliance Administrator

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of AMcL
Appeal No. 18-14

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VIRGINIA:

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

IN RE: AMcL, LLC. (Michael J. Morrissey)
Appeal No. 18-14

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. On July 9, 2018, the County of Henrico Building Inspections Department (County), in enforcement of the Virginia Property Maintenance (VMC), issued a notice of violation to AML LLC for rental property located at 2112 Oakwood Lane. The notice outlined three VMC violations related to no water service at the home and contained a statement of right of appeal.

2. Mr. Morrissey filed an appeal to the County of Henrico Local Board of Appeals (local board) on July 12, 2018.

3. The local board conducted a hearing in August of 2018 and upheld the decision of the County. Mr. Morrissey filed an application for appeal to the Review Board on August 20, 2018 after receipt of the local board's decision.

4. The County rescinded the notice of violation on October 4, 2018.

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

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Suggested Issue for Resolution by the Review Board

1. Whether or not to dismiss the appeal as not properly before the Board since the County rescinded the notice of violation, based on previous rulings of the Review Board which hold that no right of appeal exists where a NOV has been resolved.¹

If ruling in the negative then;

2. Whether to overturn the decision of the County and the local appeals board that a violation of the VMC Section 501.2 (Responsibility) exists.

3. Whether to overturn the decision of the County and the local appeals board that a violation of the VMC Section 505.1 (General) exists.

4. Whether to overturn the decision of the County and the local appeals board that a violation of the VMC Section 505.3 (Supply) exists.

¹ See Review Board Case No. 03-3 and 17-9. See also Review Board Case Nos. 98-8, 98-16, 00-2, 00-14, 11-9&10, and 16-6.

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Basic Documents

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COMMONWEALTH OF VIRGINIA
COUNTY OF HENRICO

GREGORY H. REVELS CBO
Building Official

H. Bolman Bowles, P.E.
Deputy Building Official

July 9, 2018

AML LLC
2112 Oakwood Lane
Henrico, VA 23228

RECEIVED

JUL 12 2018

County of Henrico
Building Inspections

Notice of Violation

Address: **2112 Oakwood Lane**
COD2018-00042

An inspection of the home at the above listed property on July 9, 2018 revealed the following violations of the Virginia Maintenance Code.

- No water service to home

501.2 Responsibility. The *owner* of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any structure or *premises* which does not comply with the requirements of this chapter.

505.1 General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an *approved* private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the *International Plumbing Code*.

505.3 Supply. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

Pursuant to Section 119.5 of the Virginia Uniform Statewide Building Code the owner or the owner's agent may appeal a decision of the Building Official concerning the application of the Virginia Statewide Building Code. The applicant shall submit a written request of appeal to the local Board of Building Code Appeals.

Please comply by July 12, 2018.

John Butler
Building Inspector/Existing Structures
804-349-2084

HENRICO COUNTY BOARD OF BUILDING CODE APPEALS

NOTICE OF APPEAL

Hand Delivered to:

HENRICO COUNTY BOARD OF BUILDING CODE APPEALS

Attention: Ms. Linda Brown, Administrative Assistant
Henrico County Government Ctr. West
4301 E Parham Rd, 2nd floor
Richmond, VA 23228

RECEIVED

JUL 12 2018

County of Henrico
Building Inspections

July 12, 2018

Dear Ms. Brown:

I hereby file this Notice of Appeal to the Notice of Violation dated July 9, 2018 issued by John Butler. A copy of that Notice is attached.

The Notice is improper in both its procedure and substance, and is without merit.

By filing this Notice of Appeal, I understand that a hearing date will be set for when the legality of this alleged violation from Mr. Butler can be heard, its appropriateness reviewed, and following a hearing on this appeal, a determination will be made by the Board.

Attached are:

Exhibit A: The content of the email I received with Exhibit B attached, it is dated Tuesday of this week, July 10, 2018, near the close of business.

Exhibit B: The Notice of Violation. Note that although this was taken out on Monday July 9th by Mr. Butler, it was withheld from being sent to me until almost the close of business on Tuesday July 10th, and with a "comply by" date of Thursday, July 12th of the same week

Take note also that Mr. Butler states in Exhibit A that he has set a court date for a contested hearing on this for this Friday, July 13th. This was done unilaterally by Mr. Butler without any prior notice to me.

My contact information is listed below.

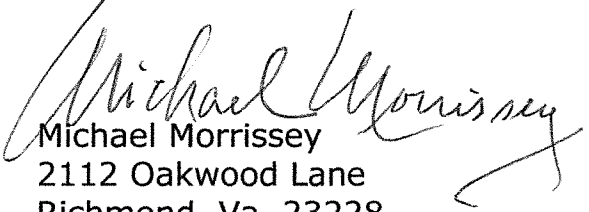
RECEIVED

JUL 12 2018

County of Henrico
Building Inspections

Thank you for your attention to this.

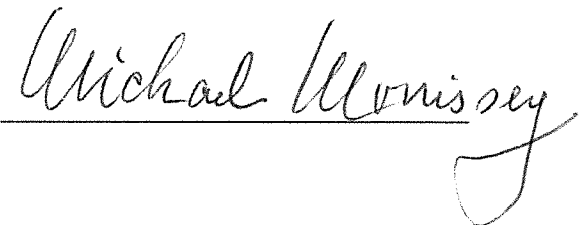
Respectfully,



Michael Morrissey
2112 Oakwood Lane
Richmond, Va. 23228
Phone: 804-502-4468
Email:
patentfirst@comcast.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I did, on this 12th day of July, 2018, hand deliver a copy of the foregoing Notice of Appeal to John Butler on the 2nd floor of the Henrico County Administration Building by leaving a copy thereof with the receptionist to be delivered to Mr. Butler.



RECEIVED

JUL 12 2018

County of Henrico
Building Inspections

Exhibit A

7/10/2018 4:12 PM

John.Butlerbut02@henrico.us

Mr. Morrissey,
the state corporation commission listed L. Wendell Allen as the registered agent for your company. His office was served with a summons and violation notice today for your company to appear in court this Friday for permitting another to occupy a structure that does not comply with the Virginia Maintenance Code.
I am enclosing a copy of the notice of violation which gives you until Thursday to bring the property into compliance.

John Butler
Henrico County Building Inspections
(804)349-2084

HENRICO COUNTY BOARD OF BUILDING CODE APPEALS

Hand Delivered to:

HENRICO COUNTY BOARD OF BUILDING CODE APPEALS

Attention: Ms. Linda Brown, Administrative Assistant

Henrico County Government Ctr. West

4301 E Parham Rd, 2nd floor

Richmond, VA 23228

July 18, 2018

REQUEST FOR A BILL OF PARTICULARS FROM JOHN BUTLER

COMES NOW the respondent and files this request to the complainant John Butler for him to file, within 10 days from this date, i.e. on or before July 28th, a statement of particulars as to the violation that he has alleged.

Mr. Butler is asked to spell out exactly what the respondent has supposedly done wrong, with specificity and in detail. The alleged violation does not clearly address or describe the specific details.

AML, LLC (sic)

By: 
Its agent

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2018, the original of this document was hand delivered to Ms. Linda Brown, Coordinator of the Appeal Hearing, and a copy was sent by Ms. Brown to John Butler.





COMMONWEALTH OF VIRGINIA
COUNTY OF HENRICO

BOARD OF BUILDING
CODE APPEALS

Resolution
Local Board of Building Code Appeals

County of Henrico,
Virginia

WHEREAS, on July 9, 2108, AML LLC was issued a notice of violation of Section 501.2 of the 2012 Virginia Maintenance Code concerning property owned by AML LLC at 2112 Oakwood Lane, Henrico, Virginia 23228 by Existing Structures Inspection Supervisor John Butler; and,

WHEREAS, AML LLC is a limited liability company owned and operated by Mr. Michael Morrissey; and,

WHEREAS, on July 12, 2018, Mr. Michael Morrissey appealed the notice of violation to the Henrico County Board of Building Code Appeals; and,

WHEREAS, having heard Mr. Morrissey's appeal on August 3, 2018, the Board has determined that issuance of the notice of violation was appropriate and the appeal should be denied.

NOW, THEREFORE, BE IT RESOLVED by the Henrico County Board of Building Code Appeals that it upholds the decision by Mr. Butler to issue the notice of violation and denies the appeal.

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

Chairman: Thomas A. Rochecharlie, III
Thomas A. Rochecharlie, III, P.E., LEED AP

Date: 8/7/18

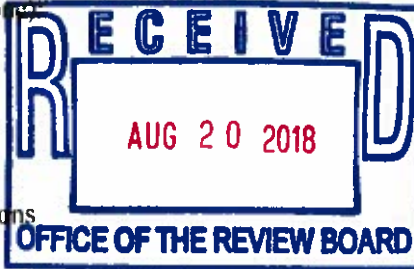
ORIGINAL

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

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one)

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



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

AMcL, LLC

c/o its agent, M.J. Morrissey, 2112 Oakwood Lane

Richmond, Va. 23228 Phone (804) 502-4468

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

John Butler, building inspector; Ms. Linda Brown, building inspection office

Henrico County Administration Building, 2nd floor; 4301 East Parham Road

Henrico, VA 23228 Phone (804) 501-4360

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 17th day of August, 2018 a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

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

Signature of Applicant: AMcL, LLC by M.J. Morrissey, agent

Name of Applicant: AMcL, LLC
(please print or type)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 2018, I did have the original of the Application for Administrative Appeal and its attached documents hand-delivered to:

The State Technical Review Board, and

did have a copy delivered to the following responsible people associated with Henrico County by leaving copies with Ms. Linda Brown in the office of building inspections for:

Ms. Linda Brown, office of building inspections, Mr. John Butler, Mr. John A. Vithoulkas.

AMcL, LLC

By:

A handwritten signature in blue ink, appearing to read "C. J. Morrissey", written over a horizontal line.

Agent

Statement of specific relief sought

Applicant seeks a ruling from this Board that the code sections of the Virginia Maintenance Code, cited and relied upon by one John Butler of Henrico County, do not support the violation alleged in the Notice of Violation, and accordingly, to find that the Notice of Violation issued by Mr. Butler is not supported by the cited code sections and the Notice of Violation is null and void and is of no effect. The action of Henrico County is hereby Reversed and this matter is dismissed.

- I. In particular, applicant seeks a ruling that none of the following three code sections that the Notice of Violation is based on, namely

501.2 Responsibility. The *owner* of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any structure or *premises* which does not comply with the requirements of this chapter;

505.1 General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an *approved* private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the *International Plumbing Code*; and

505.3 Supply. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

support a finding, as argued by Mr. Butler for the County, that: in the case where the undisputed fact is that the tenant is required under a written lease to pay the utilities including the water bill, a property owner is nonetheless obligated to pay the tenant's water bill when the water is cut off due to the tenant's non-payment of the water bill; and that by not paying the tenant's water bill, the property owner violates Virginia Maintenance Code sections 505.3, 505.2, and 505.1.

- II. Further applicant seeks a ruling from this Board that the Notice of Violation is fatally defective due to the failure of Mr. Butler to comply with procedural requirements including those of the Virginia Maintenance Code, this being the Code that Mr. Butler relies on for his Notice of Violation.

- (A) "A notice of violation shall be issued by the code official before initiating legal proceedings..." Va. Maintenance Code section 104.5.4.2. (1) Applicant was first notified of this with a criminal Summons with the Notice of Violation attached to it. (2) Mr. Butler in the Summons gave only a 2 day notice given for the criminal case court date, not "a reasonable time" and not in conformance with due process by any measure. By these actions, and for both of these reasons, this Board is asked to find that Mr. Butler violated Va. Maintenance Code section **104.5.4.2**.

- (B) The notice of violation is to be communicated to the owner or the person responsible "for the maintenance of the structure." VMC section 104.5.4. Applicant submits that non-payment of a water bill by the tenant is not a part of the "maintenance of the structure" as that phrase is used in the Virginia Maintenance Code.

The Notice of Violation contains only the conclusory statement, "No water service to home." This is followed by the above three cited code sections. There is no other "findings by the code official" (as required by VMC section 104.5.4) that describes why no water service is a violation of any one of the three cited code sections.

Without such "findings" as required by the Code, there is no connection of a tenant's failure to pay its water bill to a maintenance code violation. Applicant tried to get an explanation from Mr. Butler as to how this is a code violation with the attached filing for a "Bill of Particulars" to Mr. Butler, which he ignored and never responded to it.

Accordingly, this Board is asked to find that because Mr. Butler failed to make sufficient findings to connect no water to the home (a) to a liability by the property owner and (b) to the three code sections cited from the VMC, the Notice of Violation violates the requirement that findings be made pursuant to VMC section **104.5.4**.

This Board is asked to find that the payment of a water bill is irrelevant to the cited Code sections. A tenant's non-payment of its water bill does not fall under the "maintenance of the structure." Applicant seeks the Board to find that for this reason, Mr. Butler did violate section **104.5.4.2** of the VMC which addresses only the "maintenance" of a structure, such as "to enable the fixtures to function properly, safely, and free from defects and leaks" (quoted from code section 505.3, above).

Lastly, applicant critically notes that the decision of the "local Board of Building Code Appeals" in Henrico County, which is attached, makes no findings of fact. It gives no discussion of the evidence presented, nor of the testimony given, nor of the exhibits introduced; and cites no precedent or authority as regards code interpretations or applications related to the subject code sections. The decision, despite the lengthy proceeding, just makes the conclusory statement that the notice of violation "was appropriate."

AMCL, LLC
By [Signature],
Agent

Documents Submitted By Henrico County

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COMMONWEALTH OF VIRGINIA
COUNTY OF HENRICO

GREGORY H. REVELS CBO
Building Official

H. Bolman Bowles, P.E.
Deputy Building Official

October 4, 2018

AML LLC
c/o S Scarce
2112 Oakwood Lane
Henrico, VA 23228

This letter serves to notify you that the Notice of Violation issued to on or about July 9, 2018 has been rescinded due to the violation being corrected. The Virginia State Technical Review Board, who are scheduled to hear your appeal, will be notified of this action.

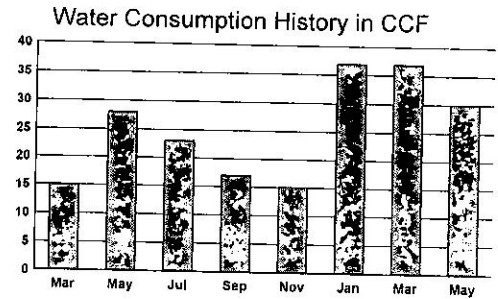
John Butler
Building Inspector/Existing Structures
804-349-2084



ACCOUNT SUMMARY

PREVIOUS BALANCE	ADJUSTMENTS	PAYMENTS	NEW CHARGES	BALANCE DUE			
1,012.86	1.00	0.00	274.10	\$1,287.96			
For Inquiries Phone (804) 501-4275		Refer to Account No. 0006089-00045773	Service Address 2112 OAKWOOD LANE				
Date of Bill: 05/29/2018			Date Payment Due: 06/28/2018				
SERVICE	METER	BILLING PERIOD	DAYS PREV. READ	CUR. READ	UNITS	MULTIPLIER	USAGE
Water	46821651	03/27/2018 05/24/2018	58	349	379	CCF	1 30

TRANSACTION DESCRIPTION	AMOUNT
Previous Balance	\$1,012.86
Delinquent Charge	\$1.00
Water Charge - 30 CCF	\$112.00
Sewer Charge - 30 CCF	\$132.10
Refuse Service Charge	\$30.00
Balance Due	\$1,287.96



NOTE: If the balance due includes an unpaid previous balance service disconnection could occur without additional notification. Please refer to the SERVICE RECONNECTION POLICY on the last page of your bill. Call 804-501-4275.

See back of bill for payment options

If paying by mail: Detach this portion and return it with your payment in the enclosed envelope



PLEASE ENTER ACCOUNT NUMBER ON YOUR CHECK

0006089000457730001287961

ACCOUNT NUMBER	BALANCE DUE	DUE DATE	AMOUNT ENCLOSED
0006089-00045773	\$1,287.96	06/28/2018	

MAKE CHECK PAYABLE TO COUNTY OF HENRICO

PLEASE ALLOW AT LEAST 5 BUSINESS DAYS FOR MAILING
 PAY BY DUE DATE TO AVOID A \$1 PAST DUE CHARGE

AML LLC
 MICHAEL J MORRISSEY
 MICHAEL-DOROTHY MORRISSEY
 2112 OAKWOOD LANE
 HENRICO VA 23228-5734

COUNTY OF HENRICO
 P.O. BOX 90799
 HENRICO, VA 23228-0799

!232280799990!

!232285734121!

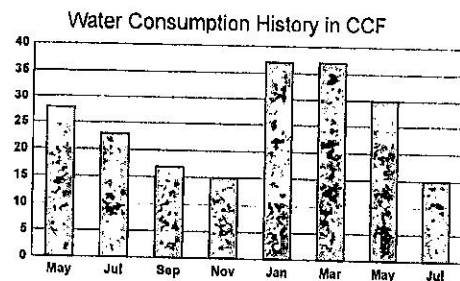


COUNTY OF HENRICO, VIRGINIA
 DEPARTMENT OF PUBLIC UTILITIES
 P.O. BOX 90775
 HENRICO, VA 23273-0775

ACCOUNT SUMMARY

PREVIOUS BALANCE	ADJUSTMENTS	PAYMENTS	NEW CHARGES	BALANCE DUE				
1,287.96	1.00	756.00CR	261.97	\$794.93				
For Inquiries Phone (804) 501-4275		Refer to Account No. 0006089-00045773	Service Address 2112 OAKWOOD LANE					
Date of Bill: 07/27/2018		Date Payment Due: 08/27/2018						
SERVICE	METER	BILLING PERIOD	DAYS	PREV. READ	CUR. READ	UNITS	MULTIPLIER	USAGE
Water	46821651	05/24/2018 07/25/2018	62	379	394	CCF	1	15

TRANSACTION DESCRIPTION	AMOUNT
Previous Balance	\$1,287.96
Delinquent Charge	\$1.00
Payment - Thank You - 07/11/2018	\$756.00CR
Water Charge - 15 CCF	\$64.33
Sewer Charge - 15 CCF	\$81.99
Refuse Service Charge	\$10.85
Reconnection Charge	\$105.00
Balance Due	\$794.93



NOTE: If the balance due includes an unpaid previous balance service disconnection could occur without additional notification. Please refer to the SERVICE RECONNECTION POLICY on the last page of your bill. Call 804-501-4275.

See back of bill for payment options

If paying by mail: Detach this portion and return it with your payment in the enclosed envelope



PLEASE ENTER ACCOUNT NUMBER ON YOUR CHECK

0006089000457730000794934

ACCOUNT NUMBER	BALANCE DUE	DUE DATE	AMOUNT ENCLOSED
0006089-00045773	\$794.93	08/27/2018	

MAKE CHECK PAYABLE TO COUNTY OF HENRICO

PLEASE ALLOW AT LEAST 5 BUSINESS DAYS FOR MAILING
 PAY BY DUE DATE TO AVOID A \$1 PAST DUE CHARGE

AML LLC
 MICHAEL-DOROTHY MORRISSEY
 2112 OAKWOOD LANE
 HENRICO VA 23228-5734

COUNTY OF HENRICO
 P.O. BOX 90799
 HENRICO, VA 23228-0799

!232285734121!

!232280799990!

Created Date/Time: 08/02/2018 08:59:36 AM
 Customer Number: 00045773
 Account Number: 0006089
 Service Address: 2112 OAKWOOD LANE
 Mailing Address:
 AML LLC
 MICHAEL-DOROTHY MORRISSEY
 2112 OAKWOOD LANE
 HENRICO VA 23228-5734

Customer/Account Transaction History

Trans Date	Transaction	Description	Amount	Balance
8/2/2018 0:00	Reconnection Charge	Reconnection Charge	(\$35.00)	\$0.00
7/27/2018 0:00	Cycle Billing Due: 08/27/2018	Cycle Billing Due: 08/27/2018	\$156.97	\$794.93
7/11/2018 0:00	Payment - Cashier	Payment - Thank You	(\$756.00)	\$637.96
7/6/2018 0:00	Delinquent Charge	Delinquent Charge	\$1.00	\$1,393.96
6/26/2018 0:00	Reconnection Charge	Reconnection Charge	\$35.00	\$1,392.96
6/18/2018 0:00	Reconnection Charge	Reconnection Charge	\$35.00	\$1,357.96
6/13/2018 0:00	Reconnection Charge	Reconnection Charge	\$35.00	\$1,322.96
5/29/2018 0:00	Cycle Billing Due: 06/28/2018	Cycle Billing Due: 06/28/2018	\$274.10	\$1,287.96
5/7/2018 0:00	Delinquent Charge	Delinquent Charge	\$1.00	\$1,013.86
3/30/2018 0:00	Cycle Billing Due: 04/30/2018	Cycle Billing Due: 04/30/2018	\$321.07	\$1,012.86
3/6/2018 0:00	Delinquent Charge	Delinquent Charge	\$1.00	\$691.79
2/21/2018 0:00	Reconnection Charge	Reconnection Charge	\$35.00	\$690.79
1/30/2018 0:00	Cycle Billing Due: 03/01/2018	Cycle Billing Due: 03/01/2018	\$321.07	\$655.79
1/9/2018 0:00	Delinquent Charge	Delinquent Charge	\$1.00	\$334.72
11/30/2017 0:00	Cycle Billing Due: 01/02/2018	Cycle Billing Due: 01/02/2018	\$163.10	\$333.72
11/9/2017 0:00	Delinquent Charge	Delinquent Charge	\$1.00	\$170.62
9/27/2017 0:00	Cycle Billing Due: 10/27/2017	Cycle Billing Due: 10/27/2017	\$169.62	\$169.62
8/30/2017 0:00	Payment - Paymentus Internet	Payment - Thank You	(\$184.54)	\$0.00

Meter Removed

Created Date/Time: 09/12/2018 10:10:09 AM
 Customer Number: 00045773
 Account Number: 0006089
 Service Address: 2112 OAKWOOD LANE
 Mailing Address:
 AML LLC
 MICHAEL J MORRISSEY
 MICHAEL-DOROTHY MORRISSEY
 2112 OAKWOOD LANE
 HENRICO VA 23228-5734

Customer/Account Transaction History

Trans Date	Transaction	Amount	Balance	Created By	Modified By	Updated By	Status
8/30/2018 0:00	Payment - Paymentus Internet	(\$454.00)	(\$0.07)	RAN047		RAN047	Adjustable
8/30/2018 0:00	Payment - Paymentus Internet	(\$6.00)	\$453.93	RAN047		RAN047	Adjustable
8/29/2018 0:00	Payment - Paymentus Internet	(\$300.00)	\$459.93	MCM051		MCM051	Adjustable
8/2/2018 0:00	Reconnection Charge	(\$35.00)	\$759.93	WAL29		CON089	Adjustable
7/27/2018 0:00	Cycle Billing Due: 08/27/2018	\$156.97	\$794.93	BOA001		CAL57	Adjustable
7/11/2018 0:00	Payment - Cashier	(\$756.00)	\$637.96	MCM051		MCM051	Adjustable
7/6/2018 0:00	Delinquent Charge	\$1.00	\$1,393.96	ARC101		ARC101	Adjustable
6/26/2018 0:00	Reconnection Charge	\$35.00	\$1,392.96	CISCW		CON089	Adjustable
6/18/2018 0:00	Reconnection Charge	\$35.00	\$1,357.96	CISCW		CON089	Adjustable
6/13/2018 0:00	Reconnection Charge	\$35.00	\$1,322.96	CISCW		CON089	Adjustable
5/29/2018 0:00	Cycle Billing Due: 06/28/2018	\$274.10	\$1,287.96	BOA001		CAL57	Adjustable
5/7/2018 0:00	Delinquent Charge	\$1.00	\$1,013.86	CAL57		CAL57	Adjustable
3/30/2018 0:00	Cycle Billing Due: 04/30/2018	\$321.07	\$1,012.86	TRA50		CAL57	Adjustable
3/6/2018 0:00	Delinquent Charge	\$1.00	\$691.79	CAL57		CAL57	Adjustable
2/21/2018 0:00	Reconnection Charge	\$35.00	\$690.79	CISCW		CON089	Adjustable
1/30/2018 0:00	Cycle Billing Due: 03/01/2018	\$321.07	\$655.79	BOA001		CAL57	Adjustable
1/9/2018 0:00	Delinquent Charge	\$1.00	\$334.72	CAL57		CAL57	Adjustable
11/30/2017 0:00	Cycle Billing Due: 01/02/2018	\$163.10	\$333.72	TRA50		CAL57	Adjustable
11/9/2017 0:00	Delinquent Charge	\$1.00	\$170.62	CAL57		CAL57	Adjustable

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Additional Documents
and Written Arguments
Submitted by
AMcL, LLC.

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VIRGINIA:

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

IN RE: AMcL, LLC.
Appeal No. 18-14

**HOMEOWNER'S ADDITIONS, CORRECTIONS OR OBJECTIONS TO THE
REVIEW BOARD STAFF DOCUMENT**

In response to the Review Board Staff Document sent via email from the Board's Secretary on October 30, 2018, the owner of the subject property, AMcL, LLC ("homeowner"), by its agent Michael Morrissey, files this response with additions, corrections or objections to that Staff Document.

I. In the section: Suggested Summary of the Appeal

(1) Delete "(Michael J. Morrissey)" from the style of the case.

(2) delete

1. issued a notice of violation to Mr. Morrissey for rental property

and it should be

1. issued a notice of violation to AML, LLC (sic) for rental property

(3) amend

2. Mr. Morrissey filed an appeal

and it should be

2. Mr. Morrissey as agent for the LLC property owner filed an appeal

(4) amend

3. Mr. Morrissey filed an application for appeal

and it should be

3 Mr. Morrissey as agent for the LLC property owner filed an application for appeal

The point behind suggested change (1) is that this case is about the owner of the property, AMcL, LLC.

The point behind the 3 suggested changes (2) – (4) is based on the undisputed fact that the owner of the property is AMcL, LLC. (It is noted that the county erroneously listed the LLC as AML, LLC in its NOV.) Also undisputed is that Michael Morrissey is a member of AMcL, LLC and has acted in this case as its agent and on behalf of the property owner. This is consistent with the county's service of papers on the registered agent for AMcL, LLC.

II. In the section: Suggested Issue for Resolution by the Review Board

Regarding the first Suggested Issue for Resolution by the Review Board, it reads:

Whether or not to dismiss the appeal as not properly before the Board since the County rescinded the notice of violation based on previous rulings of the Review Board which hold that no right of appeal exists where a NOV has been resolved?

There is improper wording in the part that reads:

...rulings of the Review Board which hold that no right of appeal exists where a NOV has been resolved.

- (1) the use of the word "resolved" is a legal conclusion, is not defined and is an indefinite word. The county has only said that they "rescinded" the NOV.
- (2) the issue wrongly contains a characterization of what the cases hold, namely, the phrase: "which hold that no right of appeal exists where a NOV has been resolved."

Thus the premise in the statement of issue #1 is incorrect or not established. Both the legal meaning of "resolved" and what any prior case of the Board holds are yet to be determined with reference to the context of this case. It is improper for the Board to characterize what it thinks all the cited cases hold and to do with an indefinite and conclusory word.

Issue #1 suggestion, should read:

1. Whether or not to dismiss the appeal as not properly before the Board based on the County's Oct. 4, 2018 letter stating that the Notice of Violation has been rescinded?

Issues 2, 3 and 4 only broadly state the issues. More specific wording of the issues would be more focused and better, using the issues presented in homeowner's brief. That brief raises not just the issues of the three code sections, but more specifically, whether when the county water supplier cuts off the water for non-payment by tenant of its water bill, that constitutes a violation by the homeowner of the three cited code sections?

Procedural issues going to the local board hearing and sanctions as provided for in the Virginia Maintenance Code are also raised in the brief, and homeowner points to that as suggested changes to make.

Issues should be added that are more fact specific and cover the issues presented that go beyond those in the forefront of whether the three code sections are violated based on the facts of this case.

Respectfully submitted,

AMcL, LLC

By _____
Agent

I hereby certify that a copy of the foregoing was sent by email on Jan. 2, 2019 to Gregory Revels at rev04@henrico.us

AMcL, LLC
2112 Oakwood Lane
Richmond, Virginia 23220

Tel: 9804) 502-4468
Email: patentfirst@comcast.net

January 2, 2019

TO:

W. Travis Luter Sr., C.B.C.O.

Secretary to the State Building Code Technical Review Board
Code and Regulation Specialist
Department of Housing & Community Development
Division of Building & Fire Regulation
State Building Codes Office
600 East Main Street, Suite 300
Richmond, Virginia 23219

IN RE: AMcL, LLC.
Appeal No. 18-14

Dear Mr. Luter:

Pursuant to your email of November 30, 2018, homeowner AMcL, LLC in the above-referenced case submits its additional documents and written arguments to be included with the information going to the Review Board members for the appeal.

This is submitted as the Brief of homeowner AMcL, LLC with its tables of exhibits and copies of the documents referenced in the two exhibit tables.

Please let me know should you have any questions about these submissions.

Very truly yours,

AMcL, LLC

By: _____
Agent

Copy with attachments to: Gregory Revels at: rev04@henrico.us

Attachments:

Brief of homeowner AMcL, LLC

Exhibits and table of exhibits 1-17

Exhibits and table of exhibits A-S

Exhibits and table of exhibits AA-HH

VIRGINIA:

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

IN RE: AMcL, LLC.
Appeal No. 18-14

BRIEF OF HOMEOWNER AMcL, LLC

Introduction

Homeowner AMcL, LLC, by its agent Michael Morrissey, hereby submits documents, written statements of fact and arguments, and points and authorities and exhibit tables in support of its case. That case centers on the showing that the fact that the county's water department cuts off the tenants' water supply for non-payment of the water bill does not create a violation of Virginia Maintenance Code (VMC) sections 501.2, 505.1 or 505.3, as alleged by the county.

As a preliminary matter pursuant to the Board's email dated October 31, 2018, a question of whether the case should be dismissed based on the county's October 4, 2018 letter that rescinded the Notice of Violation after the case was pending on appeal before this Board and after the Sheriff's office had evicted the tenants from the property making them no longer occupying a house without water service.

As is solidly established by the material submitted, and upon related testimony and evidence adduced at the time of hearing, the letter rescinding the Notice of Violation is insufficient to deny this Board subject matter jurisdiction, also at times referred to as mootness of all issues.

Also solidly established by the material submitted, and upon related testimony and evidence adduced at the time of hearing, is that there is no violation of any one of the three code sections relied on by the county. Accordingly the lower board decision must be overturned and deemed null and void, and this Board to take further action in favor of the homeowner as it deems appropriate.

I. THE CASE PRESENTS ALIVE ISSUES THAT CONFER SUBJECT MATTER JURISDICTION ON THIS STATE BOARD TO HEAR THE CASE

Nature of the case

This appeal concerns a dispute that arose in Henrico County based on a tenant who did not pay his water bill and for which the water supplied by the County was eventually shut off. The property is located at 2112 Oakwood Lane, Henrico, Va. 23228 and is owned by AMcL, LLC. An agent of AMcL, LLC is Michael Morrissey and herein either may be referred to as "homeowner" or "owner."

Synopsis of the facts

In November 2017, two tenants Adam Neilsen and Heather Patterson signed a written lease for the property. As relevant to this hearing, the lease provided that tenants were to pay a monthly rent and pay all utilities. Paragraph 5 of the lease reflects the fact that tenants were to pay the water bill and other utilities. This term of the lease is not disputed, i.e. that it was the responsibility of the tenants to pay the bill for their water usage. Paragraph 5 states:

5. Tenants agree to take steps necessary to put utilities in their name, in either tenants' name or in both names; specifically, the electric service to the house from Dominion Energy, the water and trash pickup service from Henrico County, and if desired, cable TV, Internet and/or house phone from a cable TV supplier. The house is already wired for cable TV, Internet and house phone by Comcast.

In addition to Mr. Neilsen and Ms. Patterson, other occupants of the house were an elder lady who was said to be the mother or relative of someone in the house, and 4 children consisting of two teenage boys, one girl about 5 years old, and one baby still in diapers. This gives 7 occupants total and a dog. While Mr. Neilsen was confirmed as being employed with a job when he signed the lease, he lost that job soon after moving in and no regular employment could ever be confirmed thereafter. Mr. Neilsen was receiving public support and support from church charities. It is not believed that Ms. Patterson, who was Mr. Neilsen's girlfriend, was ever employed. The elder lady moved out within the first few months of the tenancy, for unknown reasons.

In May 2018, tenants stopped paying the rent as agreed and no rent was paid thereafter, up to the time that the sheriff came to the property and tenants were physically evicted on September 30, 2018.

Up to this time tenants had not paid certain utility bills, including their water bill, and the county shut off their water. Mr. Neilsen repeatedly manually turned the water back on at the county's in-ground water supply valve at the street, until the county removed the county's in-ground supply assembly near the street. The county employee (female) who came out to remove the assembly reported that tenant Ms. Patterson chased the employee down the street upon seeing that the valve assembly was being removed, and the employee ran away because this

tenant chased the employee down the street with something in the tenant's hand and was acting erratically in chasing away this county employee. At one point, homeowner learned from someone in the water department that Neilsen had called the water department pretending to be the homeowner. A security procedure was then entered by the water department to confirm the real homeowner in the future.

The homeowner offered repeatedly to help the tenants' to move elsewhere. See, e.g., Exh. 4, 7/9/18 email from homeowner to Deacon Castillo.

Tenants continued to occupy the house after the county had shut off the water. The situation degraded to tenants not answering their phones and the owner's agent not being able to gain access into the house. The homeowner tried to get the matter resolved agreeably, which would be quicker and without hostility, but later did have to file for eviction in the Henrico county court and go through that time-delaying process up to the sheriff's eviction on September 30, 2018. It was discovered then that the inside of the house was almost completely destroyed.

It is in the face of this background that matters giving rise to the present case took place.

The county's community maintenance (a Ms. Regina McHugh) had contacted the homeowner, informing him that trash had been accumulated all around the house, neighbors were complaining to the county, and notices had been left at the house, with tenants taking no corrective active. In short, the owner cooperatively met with Ms. McHugh, talked more with the tenants about the condition, and eventually the owner began making trips whenever necessary to remove trash and garbage from the side porch and the yards around the house and taking it to the dump. Bags of human waste were found among the trash removed from the house porch. Homeowner and Ms. McHugh had a cooperative, harmonious and productive relation in getting the outside of the house cleaned up.

The homeowner arranged by phone with tenant Neilsen to meet to talk about the intolerable living arrangement and about them moving elsewhere. The homeowner called a Mr. John Butler, who is an employee in the building inspections department of the county and the one who, along with Ms. McHugh, the homeowner had been in contact with about the situation. Homeowner stayed in contact with these two county employees about this situation because he had the same interest and concern in removing, eliminating and correcting this intolerable living situation. The problem was the tenants would not agree to move, would not correct the situation by paying their water utility bill and removing their garbage, and it was becoming more often that they would not answer phone calls and Mr. Neilsen's phone was disconnected.

Because of the reports of neighbors and owner's own observations that indicated a strong drug usage and activity were at play, and the unpredictability of Mr. Neilsen's behavior, homeowner continued his efforts to get them to move while maintaining a harmonious relation as much as possible. A discarded hypodermic needle was later found in the backyard.

In July 2018, owner again made an arrangement with tenant Neilsen to meet to discuss the situation, and the homeowner notified Mr. Butler of this, consistent with his cooperate work in keeping Mr. Butler informed of efforts to get the situation resolved. The meeting between homeowner and Mr. Neilsen was to be at the local county library on Staples Mill Road in order to have a good environment to get something accomplished and not be distracted as would be the case if they met at the house. Upon telling Mr. Butler this, Butler offered that a conference room at the county administration building could be used, and homeowner agreed with that. Mr. Butler did not convene this meeting, as Butler's notes of Exh. 7 ("convened meeting with tenant and owner") wrongly state.

Mr. Neilsen and Ms. Patterson appeared for the meeting, which was also attended by Mr. Butler, Ms. McHugh, the owner and a police officer, who Mr. Butler had arranged to be there, as Mr. Butler said, so that things do not get out of order, not knowing Mr. Neilsen's frame of mind. Up to this point of the homeowner arriving at the county's administration building to use a conference room for what owner thought was going to be the meeting between the owner and Mr. Neilsen and Ms. Patterson, owner was not aware of the county and the police officer's planned presence which Mr. Butler had arranged without prior notice to the owner.

As is relevant to this case, at that meeting, Mr. Butler told Mr. Neilsen and Ms. Patterson that they had to get the water turned back on, or else they would have to leave the house. Homeowner had earlier provided Mr. Butler with a copy of the lease with its clause that tenants were to pay for their utilities including water. Mr. Butler accepted that fact and it was the basis for him telling tenants they had to get the water turned on or else leave the house. Mr. Butler further said that he would only give them a week, by the end of that week, to get the water turned back on or else they would have to find another place to live.

At no time during the meeting was anything said about the owner paying the tenants' water bill or about any violation by the owner by not paying the tenants' water bill.

VMC sect 105 authorizes the county to condemn a structure for unsanitary conditions such as not have running water

The proper solution was to condemn the house as unsafe for human occupancy as provided for in VMC 105.1 and 105.2 and 105.4 (Unsafe structures for human occupancy) and in chpt. 2, 201.3. (Definitions). See exhibits B, C and I.

The owner with support from county employee McHugh urged Butler to condemn the structure as uninhabitable in accordance with code sect. 105.

Owner told Mr. Butler that the code provides for the county to condemn the house as being uninhabitable ("unfit for human habitation", VMC 105.2) on public health and safety grounds when there is no running water. This was urged to Mr. Butler as being the best solution if the tenants would not leave voluntarily and would not pay their water bill so to get the water turned back on. The fear was that if this had to become an eviction court case with papers served by the sheriff on the tenants, that could generate revenge and vindictive conduct by tenants who now were known to be engaging in regular drug behavior based on neighbors' reports and owner's observations of the tenants' conduct.

Mr. Butler failed to condemn the house despite another involved county employee agreeing that this was the best solution. Instead he filed a building code violation against the owner. Regrettably, owner had to institute the court eviction proceeding. As feared, the house was trashed and some of owner's valuable family possessions were stolen, likely for money and for retaliation for forcing tenants' out of the house.

VMC 104.4 - Code officials subject to sanctions

This issue was raised and argued at the local board hearing but was not ruled on by the local board. It is presented for decision at the State Board.

Some procedural dates:

July 9, 2018. Mr. Butler files Notice of violation of plumbing building code sections 501.2, 505.1 & 505.3. It is served on owner's registered agent after 3 pm in the afternoon on Tuesday July 10th. Exhs. 1, 8.

July 10th 8:46 am. Mr. Butler files (but not served) a criminal case against the owner in the Henrico court, with a court date just 3 days later on Friday July 13th. Exh. 2.

July 12th. Owner files its Notice of appeal to the local county appeal board. Exh. 11.

Aug. 3rd. Hearing held in a Henrico county small conference room. The local board finds that it is "appropriate" to find for the county. No findings of fact were made by the local board. Only the conclusory statement as to what is "appropriate."

Sept. 30th. After a lengthy court eviction proceeding, tenants are evicted from the house by the county's Sheriff's department.

Oct. 4th. Mr. Butler wrote that the July 9th Notice of Violation "has been rescinded due to the violation being corrected." It is to be noted that the county makes no motion to dismiss the appeal for any reason.

Oct. 31st. Email received from Mr. Luter (Secretary to the SBCTRB) attaching 8 board decisions on the issue of mootness.

A more complete listing of events is contained in the "Correspondence" section of homeowner's List of Exhibits.

MOOTNESS DOES NOT APPLY TO THIS CASE

By email of October 9th, the Board through Mr. Luter raised an issue of mootness and attached eight board decisions. Homeowner responds to distinguish each of those decisions and distinguishes each from the present case. But first, homeowner addresses the concept of mootness, which the courts have stated to actually be a question of subject matter jurisdiction. *Sheely v. MRI Radiology Network*, and *City of Erie v. Pap's A.M.*, infra.

Homeowner presents controlling legal authority that expands on the underlying considerations that surround this defense ("often raised by government agencies") and concludes in establishing how the present case is not moot, and notes that no motion by a party has been made saying that it is.

ARGUMENT AND AUTHORITY

The question of whether this appeal is now moot because the old tenants no longer live at the house must be answered in the negative.

This is a classic attempt, well recognized and addressed in the case law. The attempt is that an entity leashing out a violation based on what it knows to be a temporal condition, and knowing full well that the condition will change before it ever gets through the appeal process. Regardless of the merits of the alleged violation, the entity knows that when the temporal condition changes, the entity then just rescinds its violation in hopes that the legitimacy of the entity's conduct and actions will never be addressed, never reviewed, never be the subject of an oversight body. The entity uses this maneuver to make sure its conduct never sees the light of day. It is, in effect, hoped to be sweep under the rug, by saying, sorry, the case is now moot because the legal actions we started we have now withdrawn.

In this case, the county did even more. It brought criminal charges against the homeowner, alleged in the public record that the homeowner acted "feloniously" even, and violated all procedural due process by giving a mere 2 days notice of a criminal court date and refusing to even reply to homeowner's request to change that date because homeowner would not be present on that date.

Accountability for the conduct and the permanent disparaging public records establish at the local level is, pursuant to the Virginia Code, to be carried out by the appeal process to this State Board.

In summary,

- the homeowner did not "correct" any plumbing fixture;
- whether the water supply is on or off is not a code violation based on the plumbing infrastructure, and there was no agreement that any code violation was "corrected";
- homeowner did not "allow" the tenants to live in the house. In fact he had them evicted, but this cannot be done in a day. Given that the tenants are there pursuant to a lease, one must go through the court process to get the eviction, just as was done here;
- the facts of this case show it to be a condition likely to reoccur in the future and for which, therefore, it is properly before the State Board for a decision; and
- the issue of sanctions was not decided at the local board and is before the State board for review.
- this is a first case of its kind as the county has cited no precedent for its actions here.

Mr. Butler has established a record both in the public files of the court system and in the records of the county and in the records of this property's address (police and Board records) and the owner's association therewith. Mr. Butler's actions have left a negative record at multiple locations that implicate the property owner and the agent of the property owner. Any record check, or security personal clearance of the owner, will bring up these negative records. Now trying to avoid review by claiming the violation has been "corrected", does not address, does not bring to a conclusion, and leaves open, the issues raised in this appeal.

This house, or another house, having a tenant who does the same thing, brings up the same issues. One thing the law and the codes like, and are designed to give, is certainty. The law abhors one being held liable for a crime or an action they never knew was a crime or a code violation. Clarity is a virtue in code construction, be it the criminal code or the building code.

This is the first case of its kind. No case precedent has been cited by the county to support its actions at the local level, which some describe as a "county gone wild" kind of violation. Owner submits that no precedent is cited because there is none.

"The right to be let alone"

This board has the duty to bring clarity and notice on the issues of this case so that everyone has proper notice of what is, and what is not, a code violation. This appeal is necessary to do that. One's privacy and property rights are not to be trampled by strained, if not completely erroneous, code interpretations. The essence of the Fourth Amendment's Right to Privacy, Supreme Court Justice William Douglas stated, is simply, "the right to be let alone." [*Public Utilities Commission v. Pollak*, 343 U.S. 451, 467 (1952) (dissenting) "The right to be let alone is indeed the beginning of all freedom."]. That right is violated when a bogus criminal case based on a misapplication of codes is instituted, then withdrawn so to avoid accountability, with indifference to having left a trail of criminal records in a multitude of departments.

Without this board's action in hearing this case on its merits, the records established with the trail of accusations implicating the property's physical address (in police records and in the county's records), the property owner and its sole agent and member, will be left open and unanswered, with no guidance for further repeat situations. On this point, this board should be aware that Morrissey, the sole member of the homeowner LLC, has received top level government security clearances in the past. His line of work is closely aligned with work requiring these types of government security clearances. Properties owned, property lived in, criminal cases and board hearing records criminal in nature are routinely and extensively investigated for a government clearance. With a clearance denied, work livelihood can be denied. For this reason too, this case, opened in multiple venues solely by Mr. Butler, needs to be brought to a conclusion...not left hanging...by a ruling on the merits by this board.

A local board ruling that rescinds a violation that is based on a temporal situation known to expire while the case is still in the appeal process is not a ruling on the issues presented at the local board and those issues are still before this Board because the situation is likely to be repeated.

An issue raised before the local board but not ruled on by that board is a live issue before the State Board and this, in addition to other points made, negates any notion of the case being moot. The issue of sanctions pursuant to VMC section VMC 104.4 was raised and avoided by the local board and is now before this Board.

A homeowner who bent over backwards to get this drug-based lifestyle out of the county; who worked with the county cleaning up visible trash from around the

house and urging that the house be condemned as uninhabitable per code section 105; and who in the end had to initiate a court case for eviction and have his house trashed likely in retaliation; and who had tenants sign a lease agreeing that payment of the water bill was their responsibility; ...no homeowner with these facts should be criminally accused of violating a plumbing building code and of having to go through expensive board hearings to show what is readily apparent by the clear language of the three code sections that have no bearing on, are irrelevant to, the water supply being shut off for non-payment.

Virginia Law Supports The Finding That This Case Is Not Moot Simply Because The Tenant Has Now Been Evicted

This burden of showing that “it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.” is not met if, as in the Fourth Circuit’s decision in *Pashby v. Delia*, a defendant retains the authority to reinstate a challenged policy. 709 F.3d 307, 316–17 (4th Cir. 2013).¹

Nothing here bars Mr. Butler and Henrico County from returning to their original conduct and plumbing code interpretation that formed the basis of the violation notice in this present case (the “challenged behavior”). Indeed, the county has endorsed John Butler’s behavior by having his boss, Gregory Revels, participate in the local board hearing and in this appeal case.

Since Defendants in *Pashby* (equivalent to the county here) expressly retained the discretion to engage again in the same conduct challenged here by the property owner, the “voluntary dismissal” of the conduct in *Pashby* was found insufficient to dismiss the appeal as moot and compels the same holding in the present case, citing *Pashby v. Delia*, *Id.*

An Analogous City Of Richmond Case Rejects Mootness

Another “mootness” attempt was made and rejected in a case here out of Richmond, Va. See *City of Richmond v. J.A. Croson Company*, 488 U.S. 469 (1989).

On September 6, 1983, the city of Richmond issued an invitation to bid on a project for the provision and installation of certain plumbing fixtures at the city jail. Issues were raised as to alleged violations in the bidding process and a denial of Croson’s submitted bid. On December 9, 1983, counsel for Croson wrote the city asking for a review of the waiver denial. The city’s attorney responded that the city had elected to rebid the project, and that there is no appeal of such a decision, thus raising a “moot” defense. The court soundly rejected this argument in this

¹ Note that the Fourth Circuit covers Virginia cases and conduct occurring in Virginia... encompassing the city of Richmond and its neighboring counties, including Henrico County.

case that went up through the Va. Ct of Appeals and the US Supreme Court. The city was only paying lip-service to get rid of what they knew was a botched case/bidding process from the start.

While Croson centered on the different issue of racial discrimination in the contract bidding process, its holding is right on point in requiring a rejection of any notion of the present case being moot, and thus insulated from appeal oversight, simply by sending a “rescinded” letter.

Reinforcing the holdings of the two above decisions rejecting mootness, and particularly relevant to the present case, is the fact that the courts have noted, with disfavor, that governmental defendants often try to moot out cases in order to avoid having to respond to attacks, such as to avoid paying attorney fees as was the case in *Buckhannon Board and Care Home, Incorporated v. West Virginia Department of Health and Human Resources*, 532 U.S. 598, 608-10 (2001). See, e.g., Federal Practice Manual for Legal Aid Attorneys, Section 3.3 et seq.

The Court has clearly stated that generally a case is not moot so long as the plaintiff (homeowner here) continues to have an injury for which the court can award relief. This is so “even if an entitlement to the primary relief no longer exists or what remains is small.” See *Chafin v. Chafin*, 133 S. Ct. 1017 (2013), where the Supreme Court discussed mootness at length. Chafin was a complex child abduction case and the decision held that the dispute between the parents was not moot because although custody had been decided, other issues regarding the custody of the child remained unresolved.

Even death of a party does not necessarily make the case moot. See *Tory v. Cochran*, 544 U.S. 734, 736-37 (2005), where the death of attorney Johnnie Cochran did not moot an injunction sought to enjoin plaintiff from defaming Cochran.

Mootness Requires More Than a Voluntary Cessation of the Challenged Behavior

“Mootness does not destroy an appellate court’s jurisdiction . . . when the questions raised are of general importance or are likely to recur” or if “collateral legal consequences that affect the rights of a party flow from the issue to be determined.” *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992), citing *Holly v. Auld*, 450 So. 2d 217, 218 n.1 (Fla. 1984); *Keezel v. State*, 358 So. 2d 247, 248-49 (Fla. 5th DCA 1978).

In *City of Mesquite v. Aladdin’s Castle, Inc.*, the Supreme Court also noted that “a defendant’s ‘voluntary cessation’ of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.” 455 U.S. 283, 289

(1982). As noted by the First Circuit in *ACLU of Mass. v. U.S. Conference of Catholic Bishops*, a savvy litigant could otherwise render itself immune to litigation by voluntarily ceasing a challenged behavior upon the filing of a complaint, then resume that behavior following dismissal for mootness. 705 F.3d 44, 54–55 (1st Cir. 2013).

Instead, a Defendant dismissal for mootness must, pursuant to the Supreme Court's holding in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, meet the heavy burden of showing that "it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." 528 U.S. 167, 190 (2000).

The "voluntary cessation" here is the tenant being evicted and therefore no one living in the house without running water. The challenged behavior here is the county's behavior of issuing a notice of violation of certain plumbing building codes to the property owner for having someone living in the house without running water.

The property owner had nothing to do with the tenants not having water. Its water service was shut off by the county because the tenants did not pay their water bill, as they had had agreed and were required to do in the lease they signed.

The property owner did not allow someone to live in its house without running water, as the county alleges. Quite the opposite. The facts show that the property owner bent over backwards in trying to do whatever was necessary to get the tenants to pay their water bill, to help them get a job, and to help them move to another place they could afford. What the county, specifically John Butler a county employee, fails to understand is that if tenants have a written lease on the property, the homeowner cannot just barrel-ahead and forcibly, physically kick them out.

The facts show the amicable efforts the owner made in trying to get the tenants out, and ultimately having to get into the more hostile position of filing for eviction in court, and risking retaliatory and vindictive conduct by tenants, which is exactly what did occur. The county is wrong is saying that the owner allowed them to live in the house after their water had been shut off. It was just the opposite. The owner acted in multiple directions to get them out.

Short Duration Conduct Is Rarely Found Moot Because "It Leaves The Defendant Free To Return To His Old Ways"

Challenges to recurrent conduct of short duration often avoid mootness under the exception for acts “capable of repetition yet evading review.” Conduct is capable of repetition but evading review when (1) the duration of the challenged action is too short to be litigated fully before the cessation or expiration of the challenged conduct, and (2) the plaintiff is reasonably expected to be subject to the same action in the future. *Spencer v. Kemna*, 523 U.S. 1, 17 (1996).

Examples: In *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016), the Court held that two-year procurement contracts are too short to permit judicial review of challenges by unsuccessful bidders and thus evade review. In *Turner v. Rogers*, 131 S. Ct. 2507 (2011), the Court held that post-release challenge to state's failure to provide non-custodial parent counsel in civil contempt proceeding at which he was sentenced for one year was not moot because one year was too short to litigate question and because he was likely subject to same proceeding because he remained in arrears).

In *Mazer v. Orange County*, 811 So. 2d 857 (Fla. 5th DCA 2002), plaintiff “submitted a public records request to the Orange County Building Department seeking information regarding procedures which must be followed for demolition of a building.”

Documents were not fully produced and the day before the due production date, the county filed a paper stating how the individual could purchase the documents. The County then moved to dismiss, and the trial court dismissed the case as moot on the ground that plaintiff had received a copy of the requested document. This court reversed and concluded that the eventual receipt of the document did not render moot the individual's request for fees” under section 119.12, Florida Statutes (1999). *Id.* at 859.

In *Board of Pardons v. Allen*, 482 U.S. 369, 370 n.1 (1987), prisoners who were denied parole without a statement of reasons challenged the denial and also sought damages. During the pendency of their case, they were paroled and released. As the Allen court stated: “Both respondents were released on parole after this suit was filed. The action is not moot, however.” Issues had not been ruled on by the lower board and the conduct was likely to be repeated. Allen found that the immunity of defendants (the board of pardons) was not settled. In addition, plaintiffs' cognizable liberty interest in the correct processing of their parole applications (conduct likely to be repeated) made the case alive on appeal and not moot.

The termination of an injury “capable of repetition yet evading review” rarely renders a case moot. Past injury not remedied is not moot. See, The Problem of Mootness. At: <http://jailhouselaw.org/the-problem-of-mootness/>

The presence of a “collateral” injury is conclusive against a mootness argument. *In re Burrell*, 415 F.3d 994, 998 (9th Cir. 2005). Because damage claims seek compensation for past harm, they cannot become moot.

A defendant (the county here) may not moot a claim for relief simply by saying that the unlawful conduct has stopped. A contrary rule would encourage the resumption of unlawful conduct following the dismissal of litigation. In *United States v. W.T. Grant Company*, the Supreme Court held that the voluntary cessation of illegal conduct would moot a case only if the defendant (the county here) established that “there is no reasonable expectation that the wrong will be repeated.” Unless the defendant meets that “heavy” burden, the court has the power to hear the case and the discretion to grant relief. *United States v. Concentrate Phosphate Export Association*, 393 U.S. 199, 203 (1968)). And, the burden of showing non-recurrence lies with the party asserting mootness. *Adarand Constructors v. Slater*, 528 U.S. 216, 222 (2000).

Two cases illustrate the difficulty in persuading a court to dismiss a case on mootness grounds on the basis of voluntary cessation.

(1) In *Friends of the Earth v. Laidlaw Environmental Services*, the Court held that a claim for civil penalties intended to deter a polluter from exceeding discharge limits in a permit was not necessarily moot, even when the facility at issue had closed, because the defendant retained the permit.

(2) In *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 287-88 (2000), the Court rejected the suggestion of mootness filed by a prevailing plaintiff in a challenge to city restrictions on adult dancing establishments. Notwithstanding that the club had closed, the Court noted the city’s continued stake in wishing to enforce the statute enjoined by the lower courts and the possibility that the plaintiff would reopen a new club.

In particular clear and unequivocal language, the court in *Sheely v. MRI Radiology Network*, 505 F.3d 1173, 1187 (11th Cir. 2007), stated:

It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. If it did, the courts would be compelled to leave the defendant free to

return to his old ways. ..., (and) the standard we have announced for determining whether a case has been mooted by the defendant's voluntary conduct is *stringent* (emphasis of the word "stringent" is in the original quote)

Under controlling law, a defendant's failure to acknowledge wrongdoing similarly suggests that cessation is motivated merely by a desire to avoid liability, and furthermore ensures that a live dispute between the parties remains. See *W.T. Grant*, 345 U.S. at 632, 73 S. Ct. 894 (noting that the "public interest in having the legality of the practices settled militates against a mootness conclusion").

Sheely, Id.

That "standard" includes the burden of demonstrating mootness as resting on the defendant (here, the county), and the essential inquiry is the genuineness of the defendant's (the county's) claim of self-correction. Defendant's failure to admit to wrongdoing suggested that the cessation was driven by defendant's (the county's by analogy to the present case) desire to avoid liability.

Case law is clear. The county in a case like this can give support to its claim of mootness, only by admitting its error and admitting that it acted wrongly in the case at the local board level. That is, that it will not serve a notice of violation on these facts again. As the courts have stated:

With respect to suits against governmental entities, mootness issues arise when the relevant agency or official declares in some way that it will no longer follow the challenged policy. Courts generally look favorably on assertions of discontinuance by public officials. However, if the assertion of discontinuance is not complete or permanent, the suggestion of mootness is likely to be denied.

If the assertion of discontinuance is not complete or permanent, the suggestion of mootness is likely to be denied. *Demery v. Arpaio*, 378 F.3d 1020, 1025-26 (9th Cir. 2004), in which mootness was rejected when the sheriff stated its intent to again show challenged webcams of jail facility on-line. Moreover, the defendant who discontinues the challenged conduct while proclaiming its legality is particularly unlikely to succeed in mooting a case. *Knox v. Service Employees International Union, Local 1000*, 132 S. Ct. 2277, 2287 (2012). Contrast with, e.g., *Saladin v. City of Milledgeville*, 812 F.2d 687, 691 (11th Cir. 1987), in which the removal of city's seal containing the word Christianity from water tanks, vehicles, and uniforms and the promise not to display it in the future did moot the challenge to its display.

Courts frequently reject suggestions of mootness when the defendant fails to offer some assurance that the challenged policy will not be resumed. *American Iron and Steel Institute v. Environmental Protection Agency*, 115 F.3d 979, 1006-07 (D.C.

Cir. 1997). Also, *Sheely v. MRI Radiology Network*, and *City of Erie v. Pap's A.M.*, supra.

AS LONG AS THIS LOCAL RULING IS ALLOWED TO STAND, EVERY PROPERTY OWNER IN HENRICO COUNTY IS AT RISK

Every property owner in Henrico County who leases rental property under a lease that requires the tenant to pay for his own water usage is at severe risk, per this case, that the county will strangely interpret the plumbing building code to mean that if the water supply is ever turned off, then that plumbing code is somehow violated and for which a notice of violation will be issued against the property owner. And that Mr. Butler and the County will come up with a baseless assertion that, regardless of it being the signed lease obligation that the tenant pays his utilities, including his water bill, the property is required as a matter of law to pay the tenant's water bill or otherwise be criminally liable for a plumbing building code violation.

This is not a case where there are no issues to be decided and no injuries yet to be ruled on. The facts and referenced law is solid on this and supports this board's denial of any mootness contention, which in this case is not the subject of any motion before the Board made by a party. It is raised only by the Board *sua sponte* via Mr. Luter's October 9th email. In response to this email, homeowner has presented the facts and authorities that go to establish solidly that mootness does not apply to the issues raised for decision by this State board.

The Eight Cases Received From The State Board

The following gives a short conclusion of each of the eight cases received from the Board to show the fact situations of certain Board cases dismissed as being moot. Each one is materially factually distinguishable from the present case. More thorough summaries pointing out the differences of each case are attached as exhibits AA through HH.

Roades case

Conclusion: Home built had code violations corrected by agreement or were agreed as not being violations. So the State board had nothing to decide by this agreement between the parties. Different from the present case.

Battlefield case

Conclusion: this involves building permit and occupancy permit and which comes first. A work permit must issue before an occupancy permit. It is completely different from the present case.

Welch case

Conclusion: a defective guardrail system was cited for violations and was thereafter fixed by the contractor and was then approved. This was a permanent fixture, not a temporal situation that would never be able to be appealed. Different from the present case.

Lipinski case

Conclusion: In a rental house, the water leak in the chimney vent was not a "temporal" condition. It was permanent and would likely grow worst if not repaired. Lipinski made the repair to stop the water leak. Plus, Lipinski did not show up for the hearing until it was over. The Lipinski decision also cites to Battlefield. Different from the present case.

Long Fence case

Conclusion: Homeowner did nothing to correct any code violations, unlike in Long where Long replaced the first fence with another that complied with the code. Key discussion in Long is that the State board does not issue purely "advisory" decisions. Involves construction of a swimming pool fence initially installed with the wrong size holes and then replaced to be code compliance. Different from the present case.

SNSA case

Conclusion: Fairfax county changed it earlier ruling and issued the permit. SNSA had been denied use of the building and now he got the use permit for a restaurant, billiards parlor and dance hall. It was the same operation at the same premises. There was no correction other than correction of an original error. Different from the present case.

Owens case

Conclusion: Owens is similar, and cites, to Battlefield. While the State board appeal was pending, the city changed its earlier denial position and took an action that it argued made the case moot. Here, Owens agreed that the City agreed to do what he was asking the State board to do. It was the very relief Owens wanted. Different from the present case.

Stewart case

Conclusion: The State board agreed with Stewart and remanded the case back to the local board on a procedural issue going to how the local board hearing was conducted, namely whether all necessary people were notified/ present as regards the garage door issue. The remand action endorses the present case as to procedures followed at the local board hearing.

The State board dismissed the door obstruction issue because the city said there was now no violation which presumes Stewart removed the obstructions from the door. This was not a temporal condition that could never be appealed due to a time shortage. It was also something that Stewart physically or structurally changed to correct the violation. This is different in both regards from the present case.

II THERE IS NO VIOLATION OF VMC SECTIONS 501.2, 505.1 OR 505.3

With the mootness issue having been addressed in the preceding Section I, this Section II addresses the substance of there being no violation of VMC code sections 501.2, 505.1 or 505.3 under which the county action was brought.

Basic rules that apply to interpretation of code sections in Virginia

A code or an ordinance is to read according to "the plain and natural meaning of the words used". *McClung v. County of Henrico*, 200 Va. 870, 108 S.E.2d 513 (1959).

The key question is not what the governing body intended to enact by the code section, but the meaning of the words of the code or ordinance enacted. *Carter v. Nelms*, 204 Va. 338, 131 S.E.2d 401 (1963). The governing body's *intent* is determined only from what the ordinance says, and not from what anyone thinks it should have said. *Logan v. City Council of the City of Roanoke*, 275 Va. 483, 492, 659 S.E.2d 296, 301 (2008).

When ascertaining the plain meaning of a code section, each word's meaning must be considered in the context of the entire phrase from which it is taken. *Bell v. Commonwealth*, 22 Va. App. 93 (1996).

Curious, narrow, or strained interpretations should be avoided. *Crews v. Commonwealth*, 3 Va. App. 531 (1987). An ordinance or code section should not be extended by interpretation beyond its intended purpose. *Higgs v. Kirkbride*, 258 Va. 567, 522 S.E.2d 861 (1999). It is perfectly reasonable to conclude that if the governing body had intended to include a provision in the code, it could, and would, have done so. *Board of Zoning Appeals ex rel. County of York v. 852 L.L.C.*, 257 Va. 485, 514 S.E.2d 767 (1999).

In summary, **Give an ordinance its plain and natural meaning** [*Capelle v. Orange County*, 269 Va. 60, 607 S.E.2d 103 (2005)], and don't read language into a law that isn't there. [*Lilly v. Caroline County*, 259 Va. 291, 526 S.E.2d 743 (2000)].

The disputed Notice of Violation

The issues presented in this case and the proper ruling on the issues can be determined by reference to two papers: the Notice of Violation dated July 9, 2018 (Exh. 1) and the criminal summons John Butler caused to be issued which states the essence of his perceived violation: "allow another to occupy a home...without water service" (Exh. 2); and together with these two papers, the following key facts that Butler left out and are undisputed:

that tenants had property rights to the house and to its surrounding property pursuant to a signed lease agreement; tenants agreed in that lease to pay their own utility bills, and specifically they were responsible for paying their own water usage bill; and

that as a result of the tenants' non-payment of the water bill, the Henrico county water department shut off the water supply to the house.

This case involves the charge by John Butler acting on behalf of Henrico county that AMcL, LLC, owner of the subject property, violated three plumbing code sections, the full text of each listed on the NOV.

It is to be noted that the county has not at any time, including at the local board hearing, explained how the cited code provisions were allegedly violated. The county just put the code sections out there under a heading of "Notice of Violation." The county has never stated or explained how "no water service to home", as it states in the NOV prior to listing the 3 code sections, constitutes a violation of each of the three code sections. This is despite homeowner's filed request at the local board hearing that Butler state with specificity how the code sections are violated by any action of the homeowner. Butler did not respond to the homeowner's filing for a Bill of Particulars. (Exh. 15).

No violation is clear from the "plain and natural" language of code sections 501.2, 505.1 or 505.3 of the Virginia Maintenance Code

With no reasoning or explanation of the county to respond to, homeowner responds as follows to the clear and natural language of each code section.

501.2 states that it is the responsibility of the property owner to maintain the plumbing fixtures and plumbing facilities in compliance with the requirements of the plumbing code. The owner shall not permit another person to occupy a premises that is not in such compliance.

In response, no plumbing fixtures and facilities have been alleged not to be in code compliance. This is not an issue. No person has been permitted to occupy the house in which the plumbing fixtures and facilities are not in code compliance. The occupants of the premises were evicted through owner-initiated court eviction proceedings for reasons that included the tenants' failure to pay their water bill.

505.1 states that certain specified plumbing fixtures shall be connected to a water supply system and shall be supplied with water in accordance with the International Plumbing Code.

In response, all fixtures are connected to the county's water supply system. This connection is evident by the fact that the tenants were able to turn the water back on themselves after the county had shut it off by using a tool on the main underground supply line accessible near the street outside the house. It was the county that had to eventually remove the on/off valve mechanism entirely so that tenants could not continue doing this. As regards the supply of water to the house, it must be done "in accordance with the International Plumbing Code," meaning by use of plumbing fixtures and piping and connections installed in accordance with that Code. This does not mean that the property owner is responsible for paying the water bill of the tenants and it does not speak to what the water supplier can and cannot do when the water bill is not paid. The plumbing fixtures and piping and connections are all installed in accordance with the International Plumbing Code and the NOV does not allege that they are not.

505.3 states that the water supply system shall be "installed and maintained" to provide a water supply to the plumbing system "in sufficient volume and at pressures adequate" for the fixtures to function properly. The water supply system at the subject property is so "installed and maintained" and the NOV does not allege that it is not. The fact that the county shut off the water supply has nothing to do with the water system in the premises being installed and maintained to provide a water supply to the plumbing system.

Accordingly, there is no violation of any of the three code sections. The NOV is flawed and is in error to issue a NOV that states "no water service to house" and then just lists three code sections; the NOV says nothing more; and never, not even at the local board hearing, did Mr. Butler who was present throughout for the county, attempt to explain how the facts of this case support an alleged violation of any of the three code sections.

The county may attempt to make its case by saying that the water bill is in the name of the property owner, AMcL, LLC and then argue from this that therefore, it was the owner's responsibility to pay the water bill. This kind of reasoning is illogical and wrong. The mailing address of the water bill is a placemat for the county to identify simply who and where to send the bill to. It has nothing to do with who is responsible for paying the bill. The "service address" is at the top of the bill statement to identify the location where the water supply is being provided. The address where the bill is sent may be different from the service address or it may be the same.

The significance of the bill statement here (Exh. Q) is that it shows that the tenants had not paid their water bill at all so that the accumulated bill was \$1287.00 at which point the county shut off the water supply. It was two days after the county inspected the premises on July 9, 2018 that a church made a payment of \$756.00 for the tenants, as indicated as a payment made on 7/11/2018. A balance due of \$794.93 remained and the water continued to be shut off. This is what the county's John Butler was referring to at the meeting held on July 29th when Butler, in the presence of county community maintenance employee Regina McHugh and owner's agent Morrissey and others, turned to both tenants who were there at the table, and told them that they had to pay this water bill by the end of the week, or else they had to move out. Butler's action to issue a NOV to the homeowner flatly contradicts Butler's statement to the tenant just a week earlier.

Neither the Virginia Maintenance Code (VMC), nor the International Plumbing Code on which the VMC is based, speaks to or cares about who pays the water bill; and that is at the heart of the issue here. That is the basis for Mr. Butler issuing a NOV of 3 plumbing code sections (see Exhs. 1-2), and basing his criminal charges on his contention, however wrong, that the homeowner was responsible to pay the water

bill, thus changing his position from the prior week and ignoring the contract by which tenants agreed to pay the water bill. There are other recourses for a who-pays-the-water-bill issue. It is not by claiming, as done here by John Butler, that non-payment of the water bill, by anyone, is a plumbing code violation.

In the event that the county relies on the address on the water bill as support for its code violation claims, the mailing address is a placemat. Nothing more. In fact the name "Dorothy" on the bill refers to homeowner's mother, Dorothy Morrissey, who passed away in year 2000. That name and address shows where and to whom to mail the bill to. For example, the water bill may be mailed to the parents of their daughter to whom the water service is provided. But she travels extensively so she arranged to send the bill to her parents. Just one example. The mailing address creates no legal obligation as to who is responsible to pay the bill. It is irrelevant to the case.

The Lease Agreement Is A Contract That Cannot Be Changed By John Butler

As regards the fundamental right of private contract between parties, see, e.g., § 55-248.7 of the Virginia Landlord-Tenant Act: "A landlord and tenant may include in a rental agreement, terms and conditions ... including rent, ...and other provisions governing the rights and obligations of the parties." The county has no authority to re-write a landlord-tenant lease agreement or to violate the Va. Code, and that is what the county has done by its action here.

The most fundamental nature of contracts in our legal system is reflected at the outset in the Constitution of Virginia's Article I. Bill of Rights, Section 11. Due process of law; obligation of contracts.

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts.

"A contract is an agreement between two or more parties creating reciprocal obligations enforceable at law." From Wikipedia, the free encyclopedia.

"Virginia law allows parties the freedom to negotiate an agreement that expresses the terms and conditions that will govern their relationship ...Virginia courts will generally enforce contracts according to their terms. Parties are free to contract and the law of Virginia will not invalidate a contract because (even if) it is ill-reasoned or ill-advised; ... the contract terms are the laws that will govern the parties." (parenthesis added).

Website of Lexwork International, an association of law firms, at <https://globaledge.msu.edu/content/trade-law/virginia.pdf>

“Moreover, it is ...settled that the primary focus ...is ...to determine the parties' intention...from the language the parties employed in the contract.” Flippo v. CSC Assocs. III, L.L.C., 262 Va. 48, 64, 547 S.E.2d 216, 226 (2001).

The county disregards the existing contract of the lease agreement, and in effect illegally re-writes that contract by contending that the homeowner must pay the tenant’s water bill. The county’s action by its employee Butler amounts to a disregard of the lease contract, and to a re-writing of it in order to reach this personal or county objective.

This action of the county is not changed by the tenant being evicted because it represents a current thinking of the county, namely of its perceived right with enforcement power to re-write a private contract, and to disregard provisions of a private contract, to which the county is not a party, in violation of law. This is a live issue before this State board for review.

The local board hearing

The local board hearing that took place on August 3, 2018 was abnormal to say the least, ending with a decision that stated a conclusion only, with no findings of facts, no discussion of the evidence, no interpretation of the relevant code sections and not relating how the fact situation supports a violation of the cited code sections in the NOV. Further, the decision states that the finding for the county is “appropriate,” hardly a word used in a legal decision. The standard is not to decide what is “appropriate.” This is not a board of equity. The standard is to make findings of fact and apply those facts to the applicable law (here, the code sections), and conclude with a decision that in essence is required to be reach by applying the facts to the law. A finding of what is “appropriate” is itself inappropriate.

The required Due Process was missing at the local board hearing

Besides the sparseness of the decision, the hearing was abnormal in that attendees, including board members, were squeezed in and some left standing. It was held in what could be described as a typical government office layout. The Building Inspections office is on the second floor of the county’s administration building. There is a receptionist desk and a few chairs upon entering the office. Off to one side is a door to a conference room, not a large room, but a room with a table with chairs around it, and a piece of furniture to one side for setting equipment, papers, and the like. This was not a hearing room as expected for a board hearing.

When the parties, the witnesses and the board members started arriving, there was immediately a shortage of chairs. Despite the scurrying around to find more, there were not enough, ...not enough chairs nor space. Some attendees were left standing throughout the hearing due to lack of space and chairs. People sat wherever they wanted, first come, first get seats. No seating arrangement. One board member was seating on either a chair or the table right behind me (Morrissey). People sat wherever they wanted as they entered the (rather small) room. Those without seats stayed standing.

The meeting was never called to order. At some point someone just started talking. Whenever that person stopped, or paused, someone else would jump in and say something. Board members were scattered throughout the group. At one point the homeowner tried to introduce its expert witness, a Master licensed plumber. In response, a board member said "why do we need him? We can read the code." (paraphrased). At another point, Mr. Revels of the county had seated himself at the center seat of the table, but Mr. Revels was not a witness and was not a participant in any of the related events, nor was he a board member. Only county employees John Butler (building inspection) and Regina McHugh (community maintenance) had been involved in the case history. It was apparent that Mr. Revels was there for a public relations purpose, in front of board members who hear his department's case, appointed by the county. At one point, Mr. Revels started talking about the appeal procedure, completely irrelevant and something no one had brought that up. Yet on he went. When he stopped, someone else started up.

It did not matter what side (what party) the speaker was on. People just talked, some rambling on about something not at all about the issues. No one was in charge. There came a time when the people bunched together, some sitting, some standing and some leaning on the side table, just slowed down then stopped. That was the end of the hearing and everybody was told to leave the room so the board members can decide on their decision. The whole scene was strange. Procedural and substantive Due Process was lacking, not even to a minimal standard of procedure and decorum that should apply and be expected in any local board hearing.

The State Review Board has jurisdiction and oversight to assure "observance of required procedure" at the local board level

Homeowner is mindful of the importance of the substantive code issues as opposed to procedures and format, encompassed by the legal Due Process standard. However, it is felt that adherence to format and correct procedure in conducting a hearing might lead to better, more understandable decisions, after all that is the purpose in enacting such procedural rules.

To make clear that this Board has the jurisdiction to review not just the substantive application of code sections but also the procedures followed in the hearing below, homeowner states as follows.

As a prologue to its decisions, this Board cites to Va. Code 36-114 for its authority and its scope to review and act on local board appeals. Va. Code 36-114, in turn, states that "Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.)" Va. Code § 2.2-4000 et seq encompasses Code 2.2-4027 "Issues on Review." Two subsections are relevant: subsection (iv) goes to this Board's review of "the substantiality of the evidentiary support for findings of fact" made by the local board, which in this case there are none. More relevant as regards the nature of the hearing at the local board is subsection (iii) that recites this Board's authority to review the "observance of required procedure" at the local board. This confers jurisdiction on this Board to address procedures conducted below; and confirms a party's right to raise the procedural issue before this Board and the Board's jurisdictional authority to address the issue as it deems appropriate.

Homeowner believes that its case is solid on the substantive code section issues presented in this appeal and does not wish to distract from its primary case by injecting this procedural argument. At the same time, this is something this Board needs to be aware of because it affects the integrity of any lower board decision and this State board represents the one statutory body for review of the process followed in any local board proceeding. For this reason, and so as not to waive this issue by not asserting it, it is asserted and Notice of this matter complained of is provided to the Board.

CONCLUSION

In view of the information presented herein and the record to be produced at the State board hearing, homeowner prays that the Board grant the relief requested as to all issues presented, find that the Notice of Violation of the three cited VMC code sections is not supported, and enter its Decision favorably for the homeowner.

Respectfully submitted,

AMcL, LLC

By: _____ / s / _____
Agent

**TABLE OF HOMEOWNER'S EXHIBITS
OF BOARD-CITED CASES**

Exh #

AA	Roades case
BB	Battlefield case
CC	Welch case
DD	Lapinski case
EE	Long Fence case (& teaching of <u>Weatherly</u>)
FF	SNSA case
GG	Owens case
HH	Stewart case

Roades case

A company "Lancaster" built a home and sold it to Roades. Roades notified the county (Chesterfield) of construction defects. The county found that some allegations did constitute code violations and others did not. Some that were cited had been corrected. Rhoades appealed to the county board. The county board found 2 violations. Other issues were raised before the county board. Appeals followed to the State Board.

Prior to the State Board hearing, the parties stipulated that the violations that were directed to be re-issued at the local level have been corrected, or do not constitute code violations.

The State Board found that other code violations were invalid because there had been no decisions of the county's building office on those items, so the county appeals board lacked jurisdiction as to those alleged violations.

Thus on the merits of the violations before the State Board, all issues had been stipulated by both parties as either being corrected or not being a code violation. The State Board accordingly found no code violations. Because the parties stipulated as to no code violations, the State Board dismissed the appeal as moot.

The decision could have been stated as the parties have settled their disputes and the Board approves their settlement and stipulations, and for that reason, the appeal case is dismissed.

Conclusion: the code violations were corrected by agreement or were agreed as not being violations. So the State board had nothing to decide by this agreement between the parties. Different from the present case.

Battlefield case

Hanover issued a violation against homeowner for permitting occupancy of two houses without a certificate of occupancy. The local board upheld the violation. After the local hearing, the county issued a certificate of occupancy and revoked the building permit for one of the houses.

Battlefield withdrew its appeal on one of the houses because the county now had issued the occupancy permit.

The local board found that while it had revoked the building permit for the house in question, it was not because the construction violated the building code. "[T]he house construction meet the technical standards," stated the local board. The revocation of the building permit was due to the county's zoning ordinance, not with the building code. The question was whether the violation issued for permitting occupancy without an occupancy permit was now moot because the county had revoked the building permit for that house because of the zoning problem. This caused the problem of a violation of occupancy being issued when no certificate of occupancy had been issued in the first place.

The Board's reasoning and decision was that the code section states that a certificate of occupancy shall be obtained prior to occupancy of a structure and that certificate indicates the construction work is completed for which a work permit was issued. (sect 118.1). No certificate of occupancy is needed in the absence of a construction permit. There is no work permit issued. There is, therefore, no violation of 118.1 and because that is the basis for the violation, the violation is "without basis and invalid."

Although the decision states that the occupancy violation "is moot" because there no work permit issued for construction of the house, and a condition precedent to any occupancy violation is that a work permit be issued, the violation is more accurately "without basis and invalid", as the decision states in its "Findings" (bottom, page 4). Hence the successful ruling in favor of the homeowner/builder that found in essence that the violation issued was without basis and is invalid.

The ruling of the board was because an occupancy violation depends on a prior building permit, and that because there was no building permit, the occupancy violation was without basis and invalid.

Conclusion: this involves building permit and occupancy permit and which comes first. A work permit must issue before an occupancy permit. It is completely different from the present case.

Welch case

3 violations were issued. 2 were resolved after the county's board hearing and were removed from the appeal. The one remaining issue involved the guardrail system installed on an outside deck. As to that, Fairfax county accepted test results of the guardrail and approved a final inspection.

Welch (Vice Versa) still sought nullification of the NOV and vacating of the adverse decision by the county board, which the county refused. Welch appealed. The question was whether the NOV was properly before the State Board.

Welch argued that the guardrail was installed correctly and no changes were made to any of them since their installation and the NOV was therefore issued in error and should be rescinded.

The county argued that Welch made changes to the deck to resolve the first two cited violation and the third violation was resolved by Welch obtaining and submitting the engineer report. All violations were resolved so there was no right to appeal.

The State board found that Welch chose to resolve the cited violations and indeed did resolve them. Welch is different from the present case in that Welch took steps to make changes to the deck so to resolve 2 of the 3 violations and obtained an engineer report as to the guardrail which resolved the 3rd violation. The structure of the guardrail installation remained intact with the benefit of these corrections made by Welch.

Differently in the present case, no changes were made to any plumbing structure on the property so to correct any of the three building plumbing code violations made against the homeowner. No reports or engineering study was done to prove that the plumbing infrastructure of the house was in compliance with the plumbing code. There was no "correction" made to any plumbing piping or fixture in the house. Thus the October 4, 2018 letter from John Butler that the NOV "has been rescinded due to the violation being corrected" is incorrect. There never was a violation of any of the 3 plumbing code sections cited in the NOV. No changes or plumbing reports needed to be obtained and presented to the county to show that the plumbing pipes and fixtures in the house did not violate the relied upon code sections.

What happened was that the natural actions of a tenant eventually leaving a house and going elsewhere occurred here. The county wrongly interprets the fact that the

tenants Neilsen and Patterson no longer live there to mean that the 3 cited code sections are now not violated, unless its theory is that the homeowner has an absolute duty to provide a water supply to a tenant, regardless of the terms of the lease agreement. On this point, see the Lease Agreement Is A Contract section, page 21 of the homeowner's brief.

Synopsis of Welch: Welch took affirmative action in correcting or obtaining proof that a guardrail system is in compliance, upon receipt of which the county held that all issues were resolved and the guardrail system could remain as installed on the property.

Present case: homeowner has contested the legality of the county's action throughout, and took no action to correct a plumbing structure or anything relating to plumbing code sections 501.2, 505.1 or 505.3 to bring a plumbing structure into code compliance.

Conclusion: a defective guardrail system was cited for violations and was thereafter fixed by the contractor and was then approved. This was a permanent fixture, not a temporal situation that would never be able to be appealed. Different from the present case.

Lapinski case

Complaints were filed about a rental house in the city of Va. Beach. The city inspected the house and a NOV was issued for, among other things, a water leak at a chimney vent. After a followup inspection, an order of condemnation was issued due to the water leak at the chimney vent.

The similarity at this point to the present case is striking. The house in the present case had no water supply at all, in a house with 2 adults and 4 children that included one 5 year old and 1 still in diapers. The homeowner and a county official urged for the county to condemn the house as uninhabital. In Lapinski, the house was condemned just for a water leak at a chimney vent.

Lapinski appealed the code official's NOV to the local board. The code official replied the same day as the appeal was filed to tell Lapinski that the condemnation order had been rescinded based on a letter received from an oil company. The code official later re-inspected the house and informed Lapinski that all violations had been corrected.

Lapinski insisted to go forward with the appeal to the local board which found the appeal as moot because all violations had been corrected. Lapinski asked the State board to rule on the merits of the decisions of the code official, and for an invalidation and reversal of the NOV and of the condemnation order.

Lapinski did not show up for the hearing. The code official and the city's legal counsel were present. The State board ruled to dismiss the appeal. Shortly afterwards, Lapinski showed up, but the code official and counsel had already left. Lapinski entered some documents into the record and addressed the State board. Lapinski left, but returned soon afterwards to file a handwritten notice of appeal of the State board's dismissal of the appeal.

This case decision also cites to Battlefield for the point followed at the State board hearings that a code official's later decision, different from an earlier decision, overrides the earlier decision and the latest application of the code is considered to be the one in force and effect (not the earlier code application).

The State board held that the initial violations had been corrected by Lapinaki and for that reason it rescinded the NOV and condemnation order previously issued.

Lapinski is distinguished from the present case because in Lapinski, Lapinski corrected the conditions that gave rise to the NOV and the condemnation order.

Because those defects had been fixed, the code official's earlier decisions were rescinded. In the present case, the property owner did not correct any defective condition that would cause a violation of plumbing code sections 501.2, 505.1 or 505.3. The plumbing infrastructure remained exactly the same as it was. The county in the present case uses the very same catch words ("rescinded" and "corrected") in its letter of October 4, 2018 in an attempt to conceal the real distinction in Lapinaki being that he was cited for a legitimate code violation and he repaired and fixed the water leak so that upon a re-inspection, the defective condition(s) had been "corrected". Quite different from the present case where there is shown no legitimate code violation. No previously defective plumbing fixture, piping or connection has been changed at all to bring it into code compliance. The plumbing infrastructure has always been in code compliance.

Conclusion: In a rental house, the water leak in the chimney vent was not a "temporal" condition. It was permanent and would likely grow worst if not repaired. Lipinski made the repair to stop the water leak. Plus, Lipinski did not show up for the hearing until it was over. The Lipinski decision also cites to Battlefield. Different from the present case.

Long Fence case

(and the teaching of Weatherly V. Cochran)

This case concerns the construction of a swimming pool fence in Prince William county by Long Fence Co. that the county said violated the code because it had openings larger than that allowed. The fence was replaced and approved by the county but Long asked for reconsideration of the code compliance of the original fence, which was denied by the local board and Long appealed to the State board. Again, as in the SNSA case, a separate hearing (preliminary hearing) was set for hearing on whether the appeal should be dismissed because no violation existed.

The State board found that there was no controversy left to be adjudicated because Long had replaced the original fence and thereby corrected the violation.

This case brings into issue the legal point that the court/board does not issue purely "advisory" decisions; there must be an actual case or controversy in order for the exercise of judicial power. Otherwise the hearing body is without jurisdiction to hear the case. The requirement of an actual controversy brings into question the jurisdiction of a court or a board to hear a case. An actual case or controversy is necessary for the exercise of judicial power.

This is different and distinct from the concept of mootness. An issue can be moot based on e.g. temporal events. The word "moot" might be used by the county to mean that it is not going to enforce its originally issued NOV at this moment. That does not make the issue gone, over with, and moot as a matter of law. The county will not take the same action on the same facts tomorrow or anytime in the future. The county here in fact has shown and confirmed that it will do just that. The case then is not moot for legal purposes because the county giving lip-service by using the word "rescinded" does not mean that its thinking has changed at all. It has merely raised a momentary defense in hopes of avoiding a hearing on the merits. The county cannot deprive this Board of subject matter jurisdiction over the matter so easily, as shown by a slew of cases including Weatherly discussed next.

Quite different from the "actual controversy" requirement which, if lacking, deprives the hearing body of jurisdiction to hear the case at all, a reviewing body may entertain the issues presented by a moot case "when the claims presented involve a matter of ...public interest or when other rights or liabilities may be affected by the case's determination." Weatherly V. Cochran, 301 Neb. 426, ___ N.W.2d ___, Filed October 26, 2018. Among the factors considered in determining the "public interest", are "the desirability of an authoritative adjudication for future guidance of

public officials, and the likelihood of future recurrence of the same or a similar problem.” Id.

The analogous facts in Weatherly in some aspects to the present case, and the court’s reasoning in its decision, deserve close attention for their guidance in the issues before this State board. Weatherly centers around the expiration of a one year protective order, includes the following reasoning:

In the case on appeal, the harassment protection order expired on October 5, 2018. At this point in time, no harassment protection order exists against Cochran. We have held in other protection order cases that once an order has expired, the respondent is no longer affected by it. We have also previously noted that because of the 1-year timeframes for protection orders, such cases will almost always be moot by the time the appeal is heard.

* * *

...[U]nder certain circumstances, an appellate court may entertain the issues presented by a moot case when the claims presented involve a matter of great public interest or when other rights or liabilities may be affected by the case’s determination. In determining whether the public interest exception should be invoked, the court considers the public or private nature of the question presented, the desirability of an authoritative adjudication for future guidance of public officials, and the likelihood of future recurrence of the same or a similar problem.

In Weatherly, the court found that, although moot because of the expiration of the one-year term of the protective order,

“Authoritative guidance on the matter is desirable because it is likely to reoccur in the future. This question is also public in nature, as it is not specific to the parties of this case. Rather, the interpretation of this issue may affect any respondent in a harassment protection order hearing.”

The State board is urged to follow and adopt the same reasoning and logic to the present case, with suggested language such as:

- (1) The county has not filed a motion or otherwise moved or asked this Board to dismiss this appeal on the grounds of the issues raised being moot. On this point, the State board takes note of its role as a neutral and independent entity, not advocating or presenting argument for either party. It is the job of the parties to make motions, requests, issues and argument to the State board as it sees fit.
- (2) The Board nonetheless has the authority to consider the mootness issue *sua sponte* and has done so with consideration given to the arguments made and the authorities submitted.
- (3) Upon review of the facts and authorities on this issue, we decline to

dismiss this appeal as moot, and accordingly proceed on the merits of whether there is a violation of the cited three code sections.

Conclusion: Homeowner did nothing to correct any code violations, unlike in Long where Long replaced the first fence with another that complied with the code. Key discussion in Long is that the State board does not issue purely "advisory" decisions. Involves construction of a swimming pool fence initially installed with the wrong size holes and then replaced to be code compliance. Different from the present case.



SNSA case

SNSA leased a premise in Fairfax County to operate a restaurant and billiards parlor and sought its use also as a dance hall. SNSA appealed certain determinations of the county's Zoning appeals board. A fire prevention permit was revoked because SNSA did not have a zoning permit for a non-residential use. County also issued a NOV for a unfit/unsafe structure.

This is significant because this is the action homeowner in the present case urged the county to take, citing the house as being uninhabitable due to health and safety reasons under code 105.1 and 105.2 and 105.4 Unfit for human occupancy, and chpt 2, 201.3, by not having water with 6 people living in the house, including 4 children and 1 of which was still in diapers...a position agreed to by another county officer involved in the matter. The county's John Butler in fact took this position at the meeting with tenant on July 29TH (saying, "you have to pay that water bill by the end of this week, or else you have got to move out" (paraphrased)), a directive given to the tenant in the presence of other county officials too.

The local Fairfax board upheld both actions and SNSA appealed to the State board.

In preparing for the State board hearing, the staff saw that the notices had effectively been rescinded prior to the local board hearing because Fairfax county had issued a new non-residential use permit to SNSA. This raised the issue of whether the State board appeals were moot? The State board set a separate hearing on the mootness issue.

The State board found that the county's NOVs were rescinded because the county issued a new use permit to SNSA. This made it clear that the same operation at the same premises was approved by the county. This is different from the present case where if the same situation arises again, we have this entire case repeated all over again because of what are clearly wrong interpretations by the county of the cited plumbing code and the fundamental right of contract between parties that is so basic in Virginia law.

It is important to note the distinction between a situation being "corrected" and the situation being avoided, kicked down the road to re-surface again later. The county is using a play on the word "corrected" to actually garner "avoidability" by triggering a mootness claim. In John Butler's letter of October 4, 2018 to this Board and to the homeowner, its purpose is to lay the foundation for a dismissal of the appeal as being moot by use of the magic word "corrected", to wit: "the Notice of Violation issued...on July 9, 2018 has been rescinded due to the violation being

corrected." In reality, nothing was "corrected" (as for example in SNSA where SNSA took corrective action that made it possible for the county to change its earlier position and issue a new use permit) as to the county's claimed violation. No plumbing fixtures or piping was changed to impact any otherwise violation under the 3 cited plumbing code sections. The situation changed in that the tenant got evicted. But the issue remained. If a new tenant moved in the next day, signs a lease agreeing to paying for its water usage, then fails to pay the water bill as agreed and the water is again shut off for non-payment, the county's position has not been corrected at all. It still will issue criminal charges against the homeowner by saying the homeowner is required to pay the tenant's water bill, regardless. There is a big difference between (1) the county actually correcting this wrong of its conduct, and (2) the county playing a wordsmith game by use of the word "corrected" in the hopes of avoiding the merits and getting an early dismissal by really just kicking the issue down the road. This Board must not let the county mislead this Board by the county's careful injection of the word "corrected." The issue of whether codes sections 501.2, 505.1 & 505.3 have been violated has not been corrected at all. The plumbing on the property in all respects remains the same. These code sections do not speak to who pays the water bill and whether or not a water supply to the house is turned on or off.

Conclusion: Fairfax county changed it earlier ruling and issued the permit. SNSA had been denied use of the building and now he got the use permit for a restaurant, billiards parlor and dance hall. It was the same operation at the same premises. There was no correction other than correction of an original error. Different from the present case.

EXHIBIT

GG

Owens case

Owens hired Peters (contractor) to install a new roof. Peters obtained a work permit and submitted an engineering plan for the new roof. The new roof was installed and a third party (Sinclair) approved the work, submitted a report to the City and the City (Va Beach) approved it. Six months later Owens contacted the City alleging code violations in the new roof work. The City declined to cite Peters for any violation. Owens appealed to the local Board which upheld the City's action. Owens then appealed to the State Board. Prior to the State hearing, the City gave notice that it would accept two letters and testing done by a P.E. Freeman as a basis to reject the inspection by Sinclair.

The issue before the State board was whether the appeal is moot due to the City's new decision to issue a NOV to Peters on his roof work. At the State board hearing, the City agreed to cite Peters and do the exact three things that Owens was asking for in its appeal, and Owens agreed that the City agreed to do what Owens was asking the State board to do.

The case decision cites the Battlefield case for the point that the two cases are similar in that the City or county later agrees to do something that moots the issues on appeal. The Owens decision reports that In Battlefield, the appeal of a code official's refusal to issue a certificate of occupancy was ruled moot due to the subsequent decision to revoke the building permit for the same project. Likewise in Owens, the City official changed its earlier position and agreed to cite the contractor Peters...the very relief Owens wanted in the State board appeal. We do not have this fact situation in the present case.

In the present case, there is no change in position by the county that agrees with the position of the homeowner and agrees to give the relief the homeowner was asking for from the State board. To the contrary, in the present case, the county's action was challenged by the homeowner at the local board and this same challenge is presented at the State board.

The fact that in the ordinary course of events the tenant gets evicted does not change at all the position of the county that water getting shut off by the county due to the tenant not paying its water bill is somehow a violation of plumbing code sections 501.2, 505.1 & 505.3, and for which the homeowner is criminally liable.

In other words, the county's interpretation of the cited code sections to mean that, despite the existence of a written lease in which the tenant agrees to pay its own utility bills, including water, that, in the event of non-payment by the tenant and the shutting off of the water by the county for that reason, the homeowner is legally obligated to pay the tenant's water bill for as long as the tenant lives in the house. In effect, accepting this theory of the county espoused by the county, confers on the county the right to re-write terms and conditions of rental contracts entered into between the parties.

Conclusion: Owens is similar, and cites, to Battlefield. While the State board appeal was pending, the city changed its earlier denial position and took an action that it argued made the case moot. Here, Owens agreed that the City agreed to do what he was asking the State board to do. It was the very relief Owens wanted. Different from the present case.

Stewart case

City of Suffolk issued a NOV to Stewart for certain maintenance items at Stewart's house. The local board found against Stewart by finding that Stewart's garage was not part of a farm structure and there was a door obstruction.

An initial State board hearing was held to get a stipulation of issues to be resolved by the State board. At a later State board hearing, Stewart asked that the State board order the local board to rehear with all parties present as to the issue of the garage door. The State board agreed with Stewart and remanded the case to the local board on that issue. As regards the door obstruction issue, the city of Suffolk said there is no longer a violation at the rear door of the house so Stewart's appeal of that issue was dismissed.

Conclusion: The State board agreed with Stewart and remanded the case back to the local board on a procedural issue going to how the local board hearing was conducted, namely whether all necessary people were notified/ present as regards the garage door issue. The remand action endorses the present case as to procedures followed at the local board hearing.

The State board dismissed the door obstruction issue because the city said there was now no violation which presumes Stewart removed the obstructions from the door. This was not a temporal condition that could never be appealed due to a time shortage. It was also something that Stewart physically or structurally changed to correct the violation. This is different in both regards from the present case.

Homeowner's Exhibits

Exh #

	Correspondence	
1	Notice of Violation (NOV)	7-9-18
2	Criminal summons Butler caused to be issued in Henrico court ag the homeowner	7/10/18 8:46 am
3	Morrissey email to Butler on status update.	7/9/18 10:13 am
4	Morrissey email to Butler on status update.	7/9/18 1:50 pm
5	Calendar of Butler's actions week of July 9-13, 2018	7/9-13/18
6	Calendar June 2018 showing meeting with tenants and the county on June 29 th .	6/29/18
7	John Butler's prepared list of six dates of activity re the property	6/22-7/10, 2018
8	Email Butler to Morrissey stating summons was issued "for permitting another to occupy a structure that does not comply with the Va Maint Code, and that Morrissey has 2 days (until Thursday) to bring the property into compliance.	7/10/18 Tuesday 4:12 pm
9	Email Morrissey to church member Castillio, copy to John Butler, giving the church and Butler an update and asking the church to get in touch to help the tenants find another place to live, and the trash and yard problem.	7/10/18 9:07 am
10	Morrissey email to Butler addressing Butler's recent behavior.	7/10/18 5:58 pm
11	Homeowner's Notice of Appeal to Butler's recent actions, with attachments of: The 7/9/18 Notice of Violation Butler's email to Morrissey 7/10/18 4:12 pm	7/12/18
12	Email Morrissey to Butler informing Butler that an appeal of his NOV has been filed and asking that he accordingly remove the court case that he set on the court docket for tomorrow.	7/12/18 1:27 pm
13	Email response Butler to Morrissey saying that he will let Morrissey know as soon as he has made a decision about tomorrow's court appearance.	7/12/18 2:56 pm
14	Email reply Morrissey to Butler telling Butler the case is without merit and should be dismissed and presenting a statement to the court re two days notice only and Butler's refusal to remove this from the court's docket on for tomorrow.	7/12/18 3:24 pm
15	Homeowner's request for a bill of particulars from John Butler, for Butler "to spell out exactly what the respondent has supposedly done wrong, with	7/18/18

	specificity and in detail.”	
16	Letter Morrissey to Butler with questions relating to whether anyone reviewed or authorized the court filing before Butler made the filing with the court?	7/19/18
17	Homeowner’s filing with the local board for the county to produce two named county employees at the local board hearing on 8/3.	7/26/18
	Homeowner will use as needed the record of the Henrico court case that Butler filed against Homeowner, this being publicly available from the court	
	Homeowner will use as needed the record of the Henrico court tenant eviction case that Homeowner filed against tenants Neilsen and Patterson who rented the house at 2112 Oakwood Lane in Henrico county, this being publicly available from the court	
	Homeowner will use, if needed, the transcript and/or segments therefrom, of the local board hearing on 8/3/18, in the event that Butler or the county state, submit or represent anything that is not accurate, truthful or complete from what transpired at the local board hearing, or such use is needed to present information from that local board hearing.	
	Homeowner will use, if needed, any documents from the record of the case at the local board.	
	Homeowner will use, if needed, documents and/or photos in the possession of county employee R. McHugh.	
	Building Codes, Websites, Authorities	
A	Henrico County website Dept of Building Construction and Inspections – History An example of the code maintenance requirements is to “repair leaking plumbing.”	
B	From Henrico county website Virginia Uniform Statewide Building Code (USBC), authorizes a county to condemn any building that is unsafe.	
C	From Henrico county website, the Virginia Maintenance Code cites “no means of sewage disposal” as an example of an “unsafe building.”	
D	“Sewage” definition, Merriam-Webster dictionary	
E	“certify” definition, Google dictionary	
F	2018 International Plumbing Code Front page	
G	2009 International Plumbing Code	

	Table of Contents Home page Chpt 1, Part 2, Sect 104 Duties of the Code Official Chpt 3, Sect 301 General 301.1 Scope Chpt 3, Sect 311 Toilet facilities for workers Chpt 6, Sect 604 Design of building water distribution system	
H	Left open	
I	Left open	
J	2012 Virginia Maintenance Code, Chpt 1, sects 101-105. Includes: 104.4 Code officials subject to sanctions 104.5.3.2 and 105.2 Reports of inspections shall be in writing. 104.5.4.2 a NOV shall be issued by he code official before initiating legal proceedings 105.1 and 105.2 and 105.4 Unfit for human occupancy (and "definitions" in chpt 2, 201.3, defining "unfit for human occupancy".	
K	Virginia Maintenance Code, Chpt 5, sects 501-507	
L	2012 Virginia Maintenance Code, sect 105.2, structures unfit for human habitation.	
M	2012 Virginia Maintenance Code, sect 105.4.1, Vacating unsafe structures.	
N	2012 Virginia Maintenance Code, sect 104.5.4.2, Notice of violation shall be issued before initiating legal proceedings.	
O	Virginia Uniform Statewide Building Code (USBC), front page, states when the USBC is used.	
P	Legal authorities: Property rights, Virginia Constitution; Contracts is King in Virginia, upholding private contracts	
Q	From Hen Cty water dept., charges and payments for water service up to 8/2/2018. Shows bill got up to \$1,393 on 7/6/18; And payment receipt on 7/11/18 when a church made a partial payment on the water bill, leaving a \$637 balance that increased to \$794 on 7/27/18; Copy of water bill dated 7/27/18 for \$794.93	7/11/18 - 8/2/18
R	Homeowner's Damages, prepared for the local board hearing, itemizing damages/expenses	
S	Homeowner's proposed findings and conclusion prepared for the local board hearing.	



GREGORY H. REVELS CBO
Building Official

COMMONWEALTH OF VIRGINIA
COUNTY OF HENRICO



H. Bolman Bowles, P.E.
Deputy Building Official

July 9, 2018

AML LLC
2112 Oakwood Lane
Henrico, VA 23228

Notice of Violation

Address: **2112 Oakwood Lane**
COD2018-00042

An inspection of the home at the above listed property on July 9, 2018 revealed the following violations of the Virginia Maintenance Code.

- No water service to home

501.2 Responsibility. The *owner* of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any structure or *premises* which does not comply with the requirements of this chapter.

505.1 General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an *approved* private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the *International Plumbing Code*.

505.3 Supply. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

Pursuant to Section 119.5 of the Virginia Uniform Statewide Building Code the owner or the owner's agent may appeal a decision of the Building Official concerning the application of the Virginia Statewide Building Code. The applicant shall submit a written request of appeal to the local Board of Building Code Appeals.

Please comply by July 12, 2018.

John Butler
Building Inspector/Existing Structures
804-349-2084

**SUMMONS OF CORPORATION OR LEGAL ENTITY
MISDEMEANOR OR FELONY**

COMMONWEALTH OF VIRGINIA Va. Code § 19.2-76; Rule 3A:4

Henrico General District Court
 Juvenile and Domestic Relations District Court
 4301 East Parham Road Henrico, VA 23228-2745
CITY OR COUNTY STREET ADDRESS OF COURT

TO THE ACCUSED:

The accused is commanded to appear before this Court

on Jul 13, 2018 09:00 AM to answer the charge that or or about 07/09/2018 DATE

the accused did unlawfully and feloniously violate Virginia code section by failing to properly replace or maintain water service or allow another to occupy the home located at 2112 Oakwood Lane in Henrico County without water service which violates section 501-2, 505-1, 505-3 of the 2012 Virginia Maintenance Code.

in violation of Section 36-106(a), Code of Virginia.

in violation of Section _____, Code or Ordinances of this city, county, or town.

The accused must appear in court at the time and place shown above and appear at all other times and places and before any court or judge to which this case may be rescheduled, continued, transferred or appealed.

I, the undersigned, have found probable cause to believe that the accused committed the offense charged. Based on the sworn statements of Inspector Butler, J.A. #735, Henrico Bu _____, Complainant.

07/10/2018 08:46 AM

DATE AND TIME ISSUED

CLERK MAGISTRATE JUDGE
 Tony S. Tate



CASE NO.	ACCUSED:
	AML LLC c/o Wendell Allen <small>NAME OF LEGAL ENTITY</small>
	4906 Fitzhugh Ave Suite 200 <small>ADDRESS/LOCATION</small>
	Richmond, VA 23230
CLASS <u>MISDEMEANOR</u>	
CLASS <u>FELONY</u>	
Service was made on a representative of the legal entity pursuant to Va. Code § 19.2-76.	
2-10-18 1400 <small>DATE AND TIME OF SERVICE</small>	H.T. BRYAN <small>OFFICER</small>
	0806/Henrico/Henrico/043 <small>BADGE NO., AGENCY AND JURISDICTION</small>
	for Wade <small>SHERIFF</small>
<input type="checkbox"/> EXECUTED by service on an officer, director, manager, or employee of the accused legal entity.	
<input type="checkbox"/> EXECUTED by service on a registered agent.	
	<small>NAME OF REPRESENTATIVE</small>
	<small>TITLE OF REPRESENTATIVE</small>
	<small>ADDRESS</small>
<small>Short Offense Description: BUILDING CODE VIOLATION</small>	
<small>Offense Tracking Number:</small>	087GM1800021856
<small>FOR ADMINISTRATIVE USE ONLY Virginia Crime Code:</small>	
ORD-9967-M9	

Hearing Date/Time

Jul 13, 2018

09:00 AM



Neilsen tenant



patent first <patentfirst@comcast.net>

7/9/2018 10:13 AM

To john.butler@henrico.us

Mr. Butler,

After our call this morning, I called Deacon Casteo, got his voice mail, and left a call back message. I hope to hear back from him today and I will periodically call him throughout the day. I will keep you posted.

Michael Morrissey



patent first <patentfirst@comcast.net>

7/9/2018 1:50 PM

Adam Neilsen

To david.e.castillo1972@gmail.com Copy john.butler@henrico.us



Dear Deacon Castillo,

Thank you for returning my call. I am copying this email to Mr. John Butler at Henrico County who has been on this matter and, in particular, Mr. Butler has the urgent concern about the lack of water at the premises.

Deacon Castillo,

We talked about the urgency of the situation of Adam Neilsen and the others associated with him continuing to reside at 2112 Oakwood Lane, and in particular, either getting the finances in order so that water can be turned on, or that Adam make arrangements to find another place that is more suitable to his lifestyle and financial ability. I provided you with financial and other information concerning this tenant that you were not aware of. In response, you told me that you are going to get with the Board of the Hope Church to review its involvement in this, and you are going to have a frank talk with Adam, after having heard now from me on this.

I told you that I feel that Adam is in over his head. He has no means to pay for even the most basic of things to live at this residence. I cited, for example, that he could have paid about \$30 a month to have the trash removed, but he has not even done that. Garbage is now all over the place, with bags of garbage stacked on the screened in side porch. I spent part of last Sunday with a hired helper clearing out the rubbish scattered over one side of the house. I now have to pay to get the junk and trash removed by Wednesday of this week.

The owner-company of the property does not have funds to pay any amount towards the water. I explained that I have to pay for removal of all the junk and trash Adam has left all around. Plus he has not paid rent and owes \$3600 on that. Plus I paid his cable TV for him back in December which is still due, about \$280. Damages he has caused to the property are going to be substantial, and that is just those that I am aware of. I told you that even if he gets over this hump right now, he does not have the means to pay the future living expenses.

I further told you that I feel that if he can find another place to live, that will be better for him. Otherwise, I am planning to file today at the Henrico County General District Court eviction papers against him and his girlfriend. This will create a public record that will not be good for him. I further told you that I am here to assist in whatever way I can to get this resolved, preferably by helping Adam find another place to live. A child abuse allegation has been filed against him with Social Services; and he is likely to lose custody of the two younger children if we have to go through the eviction proceeding which could result in all these allegations being made public and the subject of ongoing litigation.

I told you I am available to meet with you or appear before the Church Board to provide correct and complete factual information, and to work with anyone towards a quick, prompt resolution of this. I lent him my truck earlier just so he would have a way to go to work. That lasted until he broke something on it, and I had to take that in for repair to get it working again. Despite that, I am still willing to devote my time and truck to help him move if he needs help.

You said that you would get back to me. I WANT TO LET YOU KNOW THAT TIME IS OF THE ESSENCE HERE BECAUSE OF THE WATER SITUATION. PLEASE WORK FAST TO LET ME AND MR. BUTLER KNOW THE RESULTS OF YOUR "FRANK MEETING" (I THINK THAT WAS YOUR WORDING) WITH ADAM. WE CANNOT PUT THIS OFF.

Thank you for your generous willingness to help Adam up to this point. You just need to be aware of the full situation.

Regards,

AMcL, LLC

By: Michael Morrissey, its agent

804-502-4468

1:50 pm, July 9 '18

July 2018

July 2018 August 2018
 Su Mo Tu We Th Fr Sa
 Su Mo Tu We Th Fr Sa

EXHIBIT
5

Must "Comply by July 12th"

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday
Jul 1	2	3	4	5	6
8	9	10	11	12	13
15	16 ON JULY 10 AM 17	18	19	20	21
22	23	24	25	26	27
29	30	31	Aug 1	2	3
					4

John Butler
 issues violation
 Notice with
 CRIMINAL CASE
 FILING

M. M. Receives
 PAPERS late
 Afternoon from
 Regis trial
 Agent

M.M. Notifies
 Butler phone
 cannot appear
 in court on
 FRIDAY

M.M.
 Filed
 NOTICE
 OF
 APPEAL

CRIM CASE
 Hearing Set
 for 9 A.M.

TODAY'S
 HEARING

June 2018

EXHIBIT

6

July 2018

Su	1	2	3	4	5	6	7
Mo	8	9	10	11	12	13	14
Tu	15	16	17	18	19	20	21
We	22	23	24	25	26	27	28
Th	29	30	31				
Fr							
Sa							

June 2018

Su	3	4	5	6	7	8	9
Mo	10	11	12	13	14	15	16
Tu	17	18	19	20	21	22	23
We	24	25	26	27	28	29	30
Th							
Fr							
Sa							

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
May 27 - Jun 2	27	28	29	30	31	Jun 1	2
Jun 3 - 9	3	4	5	6	7	8	9
Jun 10 - 16	10	11	12	13	14	15	16
					Flag Day (United States)		
Jun 17 - 23	17	18	19	20	21	22	23
		Father's Day (United St.)					
Jun 24 - 30	24	25	26	27	28	29	30
						MEETING	

Chronology of activity at 2112 Oakwood Lane

- 6/22/18-Received concern from Mr. Morrissey that his tenants were living in the home no water service.
- 6/25/18-on or about, spoke with Mr. Morrissey about concern.
- 6/27/2018-Met with tenant
- 6/29/2018-convened meeting with tenant and owner
- 7/9/2018-spoke with Mr. Morrissey about status of utility bill
- 7/10/2018-NOV issued



7/10/2018 4:12 PM

John Butlerbut02@henrico.us

Mr. Morrissey,
the state corporation commission listed L. Wendell Allen as the registered agent for your company. His office was served with a summons and violation notice today for your company to appear in court this Friday for permitting another to occupy a structure that does not comply with the Virginia Maintenance Code.

I am enclosing a copy of the notice of violation which gives you until Thursday to bring the property into compliance.

John Butler
Henrico County Building Inspections
(804)349-2084



8/1/2018

Xfinity Connect

Re: Adam Neilsen



patent first <patentfirst@comcast.net>

7/10/2018 9:07 AM



To david.e.castillo1972@gmail.com Copy john.butler@henrico.us

Dear Deacon Castillo,

Good morning. Sometime today if you can give me an update I would really appreciate it.

Henrico County is rightfully concerned about the lack of water and the tenant continuing to live there in that condition. I need to let them know if you have any news on the Church's involvement. Hopefully we can together help to find that group another place to live, but something needs to be done quickly. Thank you for all your help.

I had a meeting this morning at the property with a trash removal service and spoke with a grass cutting service. Adam's trash all around the yard has to be gone, and the grass cut, by tomorrow, so that has been a separate problem.

Michael Morrissey



patent first <patentfirst@comcast.net>

7/10/2018 5:58 PM

Re: Adam Neilsen

To John Butler <but02@henrico.us>



Mr. Butler,

You know the full details of this situation. Yet, without checking with me in advance, you schedule a court hearing just 2 1/2 days away. On 2.5 days notice. That is insufficient notice, and plus, I am to be in the Washington DC area on Friday. Most people coordinate dates like this in advance, but you resorted to this by "surprise", and this is after we have met and talked extensively in trying to resolve the situation.

I ask that you remove this from Friday's docket for the two reasons given above. I will be out of town this Friday. Like everything else about this, I will be glad to coordinate a hearing date, if that is the route you choose to go with. You are aware that the current tenant owes the company almost \$4,000 and that I am in close contact with a church that is helping out the tenant. I am also open in working with the tenant to get this resolved.

Despite you knowing all this and our regular communications and meeting with you on it, you still, on your own, set a court hearing date on July 9 for July 12, do so without even coordinating it with me, and even then I don't get notice of it until the afternoon of July 10th when the company's registered agent calls me. Two days for a contested hearing is insufficient notice that violates the most basic notions of due process.

I also note that I told you that even though the property owner company is in financial straits from leading money to the tenant and going without the rent being paid,I told you that the company would still seek a loan to cover any water deficiency, but that would not be until Monday. And just today, after the Summons was served, I received a contact from the church and they are able to advance some of the tenant's money. You know all this is in the works because it has been the subject of our discussions. Yet, you now say that the owner company has until Thursday, just the day after tomorrow, to remedy this or you, unilaterally, have it already set on the court's Friday docket.

It seems everyone but you is trying to get this resolved: the property owner LLC, the tenant Adam, and the Church through its Deacon. We are addressing this together, with hopes, as I told you just yesterday (the day you took out the Summons) that it should be done on Friday or Monday, and it probably will be Monday even though Friday is a possibility.

Still you insist that Friday is not quick enough, and it must be done by Thursday (one day difference). Then without any prior notice, you set the hearing for 9 a.m. Friday, knowing that the other 3 of us are hoping that this gets done on Friday, but it sure would not be before 9:00 in the morning on Friday, as you well know.

And in view of this, and other facts not listed here, you have the nerve to assert that the accused AML LLC acted "feloniously." Come now Mr. Butler.

Consider this a formal request that you withdraw this from the G.D. Court's docket this Friday and withdraw your self-imposed Thursday deadline for compliance.

I also note as regards the Notice of (alleged) violation, you date it as July 9th, but withheld from sending it to me until after 4 pm on July 10th, about 15 minutes before your closing time. No time was left on July 10th because you planned to not send it until the very end of the day. This is your notice to have something done, i.e. "comply", "by July 12", that's Thursday. So effectively it gives one day, Wednesday, to comply. An interesting observation: one day notice to comply and 2 day notice for a contested court hearing.

AML LLC (sic)

By its agent, M.J.Morrissey

HENRICO COUNTY BOARD OF BUILDING CODE APPEALS

NOTICE OF APPEAL



Hand Delivered to:

HENRICO COUNTY BOARD OF BUILDING CODE APPEALS

Attention: Ms. Linda Brown, Administrative Assistant

Henrico County Government Ctr. West

4301 E Parham Rd, 2nd floor

Richmond, VA 23228

July 12, 2018

Dear Ms. Brown:

I hereby file this Notice of Appeal to the Notice of Violation dated July 9, 2018 issued by John Butler. A copy of that Notice is attached.

The Notice is improper in both its procedure and substance, and is without merit.

By filing this Notice of Appeal, I understand that a hearing date will be set for when the legality of this alleged violation from Mr. Butler can be heard, its appropriateness reviewed, and following a hearing on this appeal, a determination will be made by the Board.

Attached are:

Exhibit A: The content of the email I received with Exhibit B attached, it is dated Tuesday of this week, July 10, 2018, near the close of business.

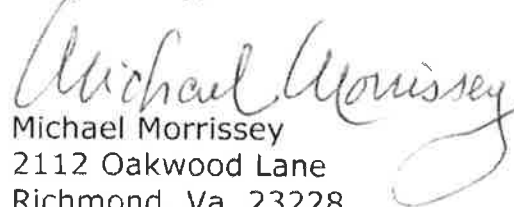
Exhibit B: The Notice of Violation. Note that although this was taken out on Monday July 9th by Mr. Butler, it was withheld from being sent to me until almost the close of business on Tuesday July 10th, and with a "comply by" date of Thursday, July 12th of the same week

Take note also that Mr. Butler states in Exhibit A that he has set a court date for a contested hearing on this for this Friday, July 13th. This was done unilaterally by Mr. Butler without any prior notice to me.

My contact information is listed below.

Thank you for your attention to this.

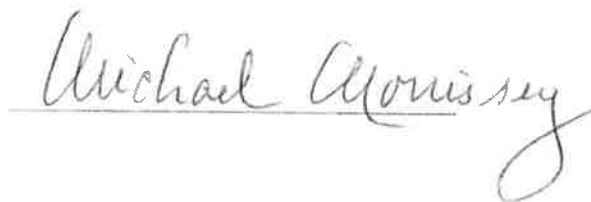
Respectfully,



Michael Morrissey
2112 Oakwood Lane
Richmond, Va. 23228
Phone: 804-502-4468
Email:
patentfirst@comcast.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I did, on this 12th day of July, 2018, hand deliver a copy of the foregoing Notice of Appeal to John Butler on the 2nd floor of the Henrico County Administration Building by leaving a copy thereof with the receptionist to be delivered to Mr. Butler.





GREGORY H. REVELS CBO
Building Official

COMMONWEALTH OF VIRGINIA
COUNTY OF HENRICO

H. Bolman Bowles, P.E.
Deputy Building Official

July 9, 2018

AML LLC
2112 Oakwood Lane
Henrico, VA 23228

Notice of Violation

Address: **2112 Oakwood Lane**
COD2018-00042

An inspection of the home at the above listed property on July 9, 2018 revealed the following violations of the Virginia Maintenance Code.

- No water service to home

501.2 Responsibility. The *owner* of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any structure or *premises* which does not comply with the requirements of this chapter.

505.1 General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an *approved* private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the *International Plumbing Code*.

505.3 Supply. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

Pursuant to Section 119.5 of the Virginia Uniform Statewide Building Code the owner or the owner's agent may appeal a decision of the Building Official concerning the application of the Virginia Statewide Building Code. The applicant shall submit a written request of appeal to the local Board of Building Code Appeals.

Please comply by **July 12, 2018**

John Butler
Building Inspector/Existing Structures
804-349-2084

7/10/2018 4:12 PM

John Butlerbut02@henrico.us

Mr. Morrissey,
the state corporation commission listed L. Wendell Allen as the registered agent for your company. His office was served with a summons and violation notice today for your company to appear in court this Friday for permitting another to occupy a structure that does not comply with the Virginia Maintenance Code.
I am enclosing a copy of the notice of violation which gives you until Thursday to bring the property into compliance.

John Butler
Henrico County Building Inspections
(804)349-2084

appeal



patent first <patentfirst@comcast.net>

7/12/2018 1:27 PM

To John Butler

Mr. Butler:

I notified you by phone at approximately 12:50 today that I have filed an appeal with the **HENRICO COUNTY BOARD OF BUILDING CODE APPEALS.**

In view of this, I ask that you do whatever is necessary to remove the case you set on tomorrow's GD Ct docket.

Please let me know what you are going to do.

Michael Morrissey





On July 12, 2018 at 2:56 PM Butler, John wrote:

Good afternoon Mr. Morrissey,
I am conferring with the county attorney's office and will let you know as soon as we have reached a decision regarding tomorrow morning's hearing.

John Butler
Henrico County Building Inspections
(804)349-2084

patent first <patentfirst@comcast.net>

7/12/2018 3:24 PM

Re: appeal

To John Butler <but02@henrico.us>

Mr. Butler: I am not going to be there. Please let the court know that I objected to the short 2 day notice of this hearing; that I have to be out of town in the Wash DC area tomorrow; that I object to the jurisdiction of the court to the identified party and make these statements as a "Special Appearance" only, not a general appearance and not so to subject myself to the court's jurisdiction in the matter by conveying this information, which is by "Special Appearance" only. At this late hour, I am not able to file papers with the court, so please inform the court that I have conveyed to you my positions which include:

That this case as filed is without merit and should be dismissed.

That this matter is the subject of a pending appeal before the **HENRICO COUNTY BOARD OF BUILDING CODE APPEALS**, and must be dismissed for this reason too.

That upon receiving only two days notice, and having to be out of town, I asked Mr. Butler to remove this case from the Court's docket on Friday July 13th, and thus far, as of 3:15 pm on Thursday July 12th, he has refused.

I accordingly move that this case be dismissed since it is not a final "notice" of Mr. Butler and is subject to a hearing on appeal by the Board of Building Code Appeals.

I move that the case be dismissed as it does not state a valid claim and jurisdiction is not established by the information of the filing, and it is without merit.

I move that the court note that the undersigned submits this information only by way of a Special Appearance only for the purposes of this information in my absence.

I move that the court take no action that would constitute prejudice in my absence.

I move that the court find that there was insufficient notice given for this hearing in violation of the due process clauses of the Virginia and U.S. Constitutions.

To the Court, this is respectfully submitted by:

Michael Morrissey

Tel 804-502-4468



HENRICO COUNTY BOARD OF BUILDING CODE APPEALS

Hand Delivered to:

HENRICO COUNTY BOARD OF BUILDING CODE APPEALS

Attention: Ms. Linda Brown, Administrative Assistant
Henrico County Government Ctr. West
4301 E Parham Rd, 2nd floor
Richmond, VA 23228



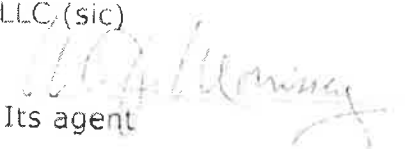
July 18, 2018

REQUEST FOR A BILL OF PARTICULARS FROM JOHN BUTLER

COMES NOW the respondent and files this request to the complainant John Butler for him to file, within 10 days from this date, i.e. on or before July 28th, a statement of particulars as to the violation that he has alleged.

Mr. Butler is asked to spell out exactly what the respondent has supposedly done wrong, with specificity and in detail. The alleged violation does not clearly address or describe the specific details.

AML, LLC, (sic)

By: 
Its agent

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2018, the original of this document was hand delivered to Ms. Linda Brown, Coordinator of the Appeal Hearing, and a copy was sent by Ms. Brown to John Butler.



Michael Morrissey
2112 Oakwood Lane
Richmond, Va. 23228
(804) 502-4468



Mr. John Butler
Existing Structures Supervisor
Henrico County Government Ctr. West
4301 E Parham Rd, 2nd floor
Richmond, VA 23228

July 19, 2018

Dear Mr. Butler:

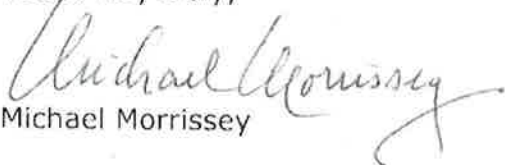
Attached is the violation notice that you filed against AML, LLC. This is to request that you provide me with the following information regarding that court filing:

Did anyone review or approve or authorize the filing before it was made with the court? Did you seek and/or obtain advice from anyone regarding the filing before it was made?

If so, provide me the name or names of each person and indicate whether he/she is employed by Henrico County. If employed by the County, give the employment title of each person and their relationship to you, i.e., whether they are someone to whom you report either directly or indirectly, or whether they are only a fellow employee and not someone to whom you report, either directly or indirectly, in the chain of command. If not employed by the County, indicate such person's relationship to you regarding this matter.

Have someone call me when your reply with this information is ready and I will come by and pick it up.

Yours very truly,


Michael Morrissey

HENRICO COUNTY BOARD OF BUILDING CODE APPEALS

REQUEST TO PRODUCE PERSONS AT HEARING



Hand Delivered to:

HENRICO COUNTY BOARD OF BUILDING CODE APPEALS

Attention: Ms. Linda Brown, Administrative Assistant
Henrico County Government Ctr. West
4301 E Parham Rd, 2nd floor
Richmond, VA 23228

July 26, 2018

**HOMEOWNER'S REQUEST THAT COUNTY PRODUCE
PERSONS AT THE HEARING**

A hearing on appeal of the July 9, 2018 Notice of Violation, issued by a Henrico County employee John Butler, is set for hearing on August 3rd. This is pursuant to the Notice of Appeal filed by the homeowner and the hearing date set by the appeals' office. See letter from Ms. Linda Brown attached. "Homeowner" as used in the filings refers to the LLC property owner and its agent listed below.

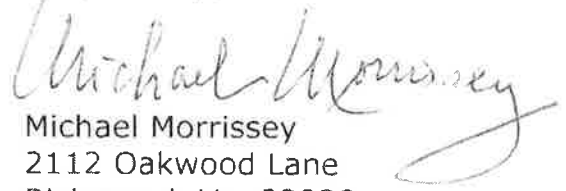
Homeowner hereby requests that Henrico County by its County Manager John Vithoukias and/or the appropriate person(s) in the office within which Mr. Butler works, produce at that hearing the following two County employees:

Ms. Regina McHugh – to appear and bring with her all photographs she has access to that relates to the condition of yard maintenance and trash on the property at 2112 Oakwood Lane, Henrico, Va. 23228;

and

Mr. Randy Silber.

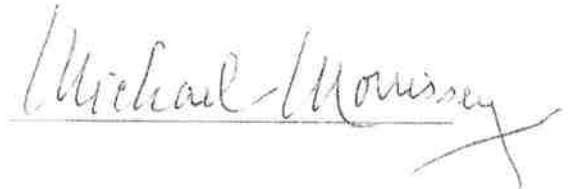
Respectfully,



Michael Morrissey
2112 Oakwood Lane
Richmond, Va. 23228
Phone: 804-502-4468
Email:
patentfirst@comcast.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I did, on the 26th day of July, 2018, hand deliver a copy of the foregoing "Homeowner's Request That County Produce Persons At The Hearing" to John Butler on the 2nd floor of the Henrico County Administration Building by leaving a copy thereof with the receptionist to be delivered to Mr. Butler; and hand delivered copies to Ms. Linda Brown for delivery to John Vithoukaskas, Regina McHugh and Randy Silber.





Henrico County

Department of Building Construction and Inspections

History

Introduction

Founded in 1946, the mission of the Department of Building Construction and Inspections is to protect the health, safety and welfare of the general public by assuring that all buildings and related equipment are constructed, installed and maintained in compliance with the Virginia Uniform Statewide Building Code.

:
:
:
:
:

Unsafe Structures, Elevators, FOG & Building Maintenance

The Virginia Maintenance Code requires that buildings and structures be maintained in good repair and that unsafe structures be either demolished or repaired. Enforcement of the Virginia Maintenance Code is optional by localities. Henrico County elected to administer the Virginia Maintenance Code in March 1996 resulting in formation of the Existing Structures Division of the agency. Enforcement of the Virginia Maintenance Code was also coordinated with other local ordinances for regulating tall grass, litter, rodents and inoperable vehicles. The maintenance requirements for existing buildings are aimed at preventing the deterioration that often leads to blight and increased crime. Examples of the maintenance requirements of the State building code include:

- prohibiting the accumulation of trash and garbage within buildings,
- repairing damaged electrical wiring,
- replacing broken windows,
- repairing damaged structural elements such as joists, beams and columns,
- painting unprotected wood that is exposed to the weather, and
- repairing leaking plumbing and roofs.

From Henrico County website at:

<https://henrico.us/bldg/existing-structures/>



1. Home

➤ Building Inspections

➤ Existing Structures

"The Virginia Uniform Statewide Building Code

The State of Virginia enacted the first State building code, titled the Virginia Uniform Statewide Building Code, in 1973. The State building code regulates both the construction and maintenance of buildings and structures throughout Virginia. State law requires that all local governments establish a building inspections department to issue permits and inspect buildings and structures when they are being built. The State building code also requires that buildings and structures be maintained in good repair and that unsafe structures be either demolished or repaired. The maintenance requirements for existing buildings are aimed at preventing the deterioration that often leads to blight and increased crime. Examples of the maintenance requirements of the State building code include:

- prohibiting the accumulation of trash and garbage within buildings,
- repairing damaged electrical wiring,
- replacing broken windows,
- repairing damaged structural elements such as joists, beams and columns,
- painting unprotected wood that is exposed to the weather, and
- repairing leaking plumbing and roofs.

Violations of the Virginia Uniform Statewide Building Code are Class 1 misdemeanors that are punishable by a fine, upon conviction, of up to \$2500. Property owners that are convicted of violations are also required by law to abate the cited violation.

Unsafe Buildings and Structures

The Virginia Uniform Statewide Building Code also authorizes the County to condemn any building or structure that is unsafe. Examples of unsafe buildings include:

- buildings that are vacant and open at door and window,
- buildings that are a threat to collapse due to structural failure,
- buildings that are occupied with no means of sewage disposal, and
- buildings with exposed electrical wires that may shock occupants or start a fire."

The Virginia Maintenance Code also authorizes the County to condemn any building or structure that is unsafe. Examples of unsafe buildings include:

- buildings that are vacant and open at door and window.
- buildings that are a threat to collapse due to structural failure,
- buildings that are occupied with no means of sewage disposal, and
- buildings with exposed electrical wires that may shock occupants or start a fire.

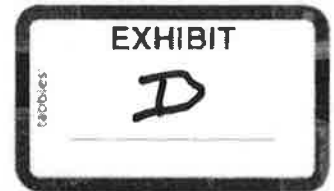
Henrico County, Virginia

at pages 5-6

July 2015

EXHIBIT
C

DEFINITIONS OF "SEWAGE"



Definition of sewage

: refuse liquids or waste matter usually carried off by sewers

Wikipedia

Sewage

From Wikipedia, the free encyclopedia

Sewage (or **domestic wastewater** or **municipal wastewater**) is a type of wastewater that is produced from a community of people. It is characterized by volume or rate of flow, physical condition, chemical and toxic constituents, and its bacteriologic status (which organisms it contains and in what quantities). It consists mostly of greywater (from sinks, tubs, showers, dishwashers, and clothes washers), blackwater (the water used to flush toilets, combined with the human waste that it flushes away); soaps and detergents; and toilet paper.

At: https://www.google.com/search?safe=off&source=hp&ei=dQthW6PhN-js5gL-qaWACA&q=what+does+it+me+to+be+certified%3F&oq=what+does+it+me+to+be+certified%3F&gs_l=p sy-ab.3..0i22i30k1i10.2610.9659.0.10095.33.28.0.4.4.0.256.3603.6j20j2.28.0....0...1c.1.64.psy-ab..1.32.3738.0..0j0i131k1j0i3k1j0i10k1.0.tggX1IEbV4Y

Dictionary

Enter a word, e.g. "pie"



cer·ti·fy

/ˈsɜrdə, fɪ/

verb

past tense: certified; past participle: certified

attest or confirm in a formal statement.

The profits for the year had been certified by the auditor.

Synonyms: verify, guarantee, attest, validate, confirm, substantiate, endorse, vouch for, testify to.

More

• officially recognize (someone or something) as possessing certain qualifications or meeting certain standards.

The certified school instructor.

Synonyms: accredit, recognize, license, authorize, approve, warrant.

Justified: honest.

• officially declare insane.

Translations, word origin, and more definitions

Feedback



Available at:

<https://www.cengage.com/c/2018-international-plumbing-code-1e-international-code-council>

All you can learn access for \$119.99 a term! Learn more about Cengage Unlimited!

New

2018 International Plumbing Code®, 1st Edition

The IPC provides minimum regulations for plumbing facilities in terms of both performance and prescriptive objectives, and provides for the acceptance of new and innovative products, materials, and systems. Important changes include: Updated table for the Minimum Number of Required Plumbing Fixtures. Single-user toilet facilities (a room having a single water closet and a single lavatory) are not required to be labeled for use by only a male or female (separated use designations). Solar thermal water heating systems need to conform to the ICC 900/SRCC 300 standard. Well systems are required to comply with standard NGWA-01 where local requirements do not cover subject matter or are lacking in detail on others.



[Home](#) / Codes

2009 International Plumbing Code (7th Printing)

(Seventh Printing: Nov 2013)

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TITLE PAGE

COPYRIGHT

PREFACE

EFFECTIVE USE OF THE INTERNATIONAL PLUMBING CODE

ORDINANCE

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CHAPTER 1 - SCOPE AND ADMINISTRATION

CHAPTER 2 - DEFINITIONS

CHAPTER 3 - GENERAL REGULATIONS

CHAPTER 4 - FIXTURES, FAUCETS AND FIXTURE FITTINGS

CHAPTER 5 - WATER HEATERS

At: <https://codes.iccsafe.org/public/document/details/toc/751>

INTERNATIONAL PLUMBING CODE – HOME PAGE

At: <https://www.iccsafe.org/codes-tech-support/topics/plumbing-mechanical-and-fuel-gas/international-plumbing-code-ipc-home-page/>

About

Overview of the IPC

The *International Plumbing Code* (IPC) is a proven, comprehensive model plumbing code that works seamlessly with ICC's family of building codes. It sets minimum regulations for plumbing systems and components to protect life, health and safety of building occupants and the public. The IPC is available for adoption by jurisdictions ranging from states to towns, and is currently adopted on the state or local level in 35 states in the U.S, the District of Columbia, Guam, and Puerto Rico.

The *IPC* is built on the proven legacy of the *BOCA National Plumbing Code*, *SBCCI Standard Plumbing Code*, and *ICBO Plumbing Code*.

The IPC sets minimum regulations for plumbing systems using both prescriptive and performance-related provisions covering topics such as:

- Backflow prevention
- Fixtures & fittings
- Water supply and distribution piping
- Water heaters
- Sanitary drainage and venting
- Traps, grease interceptors & separators
- Storm drainage
- Nonpotable water systems (rainwater, gray water, reclaimed water)



INTERNATIONAL PLUMBING CODE

CHAPTER 1

SCOPE AND ADMINISTRATION

II PART 2—ADMINISTRATION AND ENFORCEMENT

SECTION 104

DUTIES AND POWERS OF THE CODE OFFICIAL

104.3 Inspections. The code official shall make all of the required inspections, or shall accept reports of inspection by approved agencies or individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The code official is authorized to engage such expert opinion as deemed necessary to report on unusual technical issues that arise, subject to the approval of the appointing authority.

INTERNATIONAL PLUMBING CODE

CHAPTER 3 GENERAL REGULATIONS

SECTION 301 GENERAL

301.1 Scope. The provisions of this chapter shall govern the general regulations regarding the installation of plumbing not specific to other chapters.

301.2 System Installation. Plumbing shall be installed with due regard to preservation of the strength of structural members and prevention of damage to walls and other surfaces through fixture usage.

301.3 Connections to the sanitary drainage system. All plumbing fixtures, drains, appurtenances and appliances used to receive or discharge liquid wastes or sewage shall be directly connected to the sanitary drainage system of the building or premises, in accordance with the requirements of this code. This section shall not be construed to prevent the indirect waste systems required by Chapter 8.

301.4 Connections to water supply. Every plumbing fixture, device or appliance requiring or using water for its proper operation shall be directly or indirectly connected to the water supply system in accordance with the provisions of this code.

INTERNATIONAL PLUMBING CODE

CHAPTER 3

GENERAL REGULATIONS

SECTION 311

TOILET FACILITIES FOR WORKERS

311.1 General. Toilet facilities shall be provided for construction workers and such facilities shall be maintained in a sanitary condition. Construction worker toilet facilities of the nonsewer type shall conform to ANSI Z4.3.

At: <https://codes.iccsafe.org/public/chapter/content/4844/>

INTERNATIONAL PLUMBING CODE

CHAPTER 6

WATER SUPPLY AND DISTRIBUTION

SECTION 604 DESIGN OF BUILDING WATER DISTRIBUTION SYSTEM

604.1 General. The design of the water distribution system shall conform to *accepted engineering practice*. Methods utilized to determine pipe sizes shall be *approved*.

604.2 System interconnection. At the points of interconnection between the hot and cold water supply piping systems and the individual fixtures, appliances or devices, provisions shall be made to prevent flow between such piping systems.

604.3 Water distribution system design criteria. The water distribution system shall be designed, and pipe sizes shall be selected such that under conditions of peak demand, the capacities at the fixture supply pipe outlets shall not be less than shown in Table 604.3. The minimum flow rate and flow pressure provided to fixtures and appliances not listed in Table 604.3 shall be in accordance with the manufacturer's installation instructions.

At: <https://codes.iccsafe.org/public/chapter/content/4847/>

EXHIBIT
H

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EXHIBIT
I

(Left open)

EXHIBIT

J

tabbies

2012

Virginia
Maintenance
Code

*Part III of the Virginia
Uniform Statewide
Building Code*

Effective July 14, 2014

PREFACE

Introduction

The *Virginia Uniform Statewide Building Code* (USBC) is a state regulation promulgated by the Virginia Board of Housing and Community Development, a Governor-appointed board, for the purpose of establishing minimum regulations to govern the construction and maintenance of buildings and structures.

The provisions of the USBC are based on nationally recognized model building and fire codes published by the International Code Council, Inc. The model codes are made part of the USBC through a regulatory process known as incorporation by reference. The USBC also contains administrative provisions governing the use of the model codes and establishing requirements for the enforcement of the code by the local building departments and other code enforcement agencies.

In keeping with the designations of the USBC used previously, since the 2012 editions of the *International Codes* are incorporated by reference into this version of the USBC, it is known as the 2012 edition of the USBC.

Arrangement

The USBC is part of the *Virginia Administrative Code* (VAC), the official compilation of state regulations published under the authority and guidance of the Virginia Code Commission. Due to the difference in the section numbering system between the VAC and the model codes incorporated by reference into the USBC, the USBC utilizes a dual section numbering system. In the USBC, the VAC section numbers are listed first, followed by a section number matching the model code system. In this printing of the USBC, the VAC section numbers are omitted and only the model code numbering system is utilized. The version of the USBC containing both the VAC section numbers and the model code numbering is available from the Virginia Department of Housing and Community Development (DHCD) and may also be accessed through the website of the Virginia Code Commission or by subscription to the VAC.

Overview

The USBC is divided into three stand-alone parts. Part I contains regulations specific to the construction of new buildings and structures and is known as the *Virginia Construction Code*. Part II contains regulations specific to the rehabilitation of existing buildings, including alterations, additions and change of occupancy in existing buildings and structures, and is known as the *Virginia Rehabilitation Code*. Part III of the USBC contains the regulations for the maintenance of existing structures which is enforced at the option of the local governments. It is known as the *Virginia Maintenance Code*.

Codes Purchased from ICC

The 2012 edition of the USBC is being made available in pamphlet form as in past editions of the USBC. In the state pamphlet version, a single line is placed in the margin to delineate changes between the 2009 edition of the USBC and the 2012 edition of the USBC. In addition to the pamphlet form of the USBC published by DHCD, the International Code Council (ICC) publishes versions of the *Virginia Construction Code*, *Virginia Rehabilitation Code*, *Virginia Maintenance Code* and a series of Virginia specific trade codes. In the ICC published versions, marginal markings are provided to distinguish between text which is part of the International Codes and text which is part of the state regulations. Double vertical lines in the margins within the body of the codes indicate state amendments to the International Codes. As in the standard printings of the International Codes, a single vertical line in the margins within the body of the code indicates a technical change from the previous edition of the *International Codes*. Deletions from the previous editions of the *International Codes* are indicated in the form of an arrow (➡) in the margin where an entire section, paragraph, exception or table has been deleted or an item in a list of items or a table has been deleted.

Technical Assistance

The local building departments and enforcing agencies may be contacted for further information concerning the USBC. Contact information for DHCD is below.

DHCD, Division of Building and Fire Regulation
State Building Codes Office
600 East Main Street, Suite 300
Richmond, Virginia 23219
Phone: (804) 371-7150 – Email: sbco@dhcd.virginia.gov
Website: www.dhcd.virginia.gov

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CHAPTER 1

ADMINISTRATION

SECTION 101 GENERAL

101.1 Short title. The Virginia Uniform Statewide Building Code, Part III, Maintenance, may be cited as the "Virginia Maintenance Code," or as the "VMC."

101.2 Incorporation by reference. Chapters 2 - 8 of the 2012 International Property Maintenance Code, published by the International Code Council, Inc., are adopted and incorporated by reference to be an enforceable part of the VMC. The term "IPMC" means the 2012 International Property Maintenance Code, published by the International Code Council, Inc. Any codes and standards referenced in the IPMC are also considered to be part of the incorporation by reference, except that such codes and standards are used only to the prescribed extent of each such reference.

101.3 Numbering system. A dual numbering system is used in the VMC to correlate the numbering system of the Virginia Administrative Code with the numbering system of the IPMC. IPMC numbering system designations are provided in the catchlines of the Virginia Administrative Code sections and cross references between sections or chapters of the Virginia Maintenance Code use only the IPMC numbering system designations. The term "chapter" is used in the context of the numbering system of the IPMC and may mean a chapter in the VMC, a chapter in the IPMC or a chapter in a referenced code or standard, depending on the context of the use of the term. The term "chapter" is not used to designate a chapter of the Virginia Administrative Code, unless clearly indicated.

101.4 Arrangement of code provisions. The VMC is comprised of the combination of (i) the provisions of Chapter 1, Administration, which are established herein, (ii) Chapters 2 - 8 of the IPMC, which are incorporated by reference in Section 101.2, and (iii) the changes to the text of the incorporated chapters of the IPMC which are specifically identified. The terminology "changes to the text of the incorporated chapters of the IPMC which are specifically identified" shall also be referred to as the "state amendments to the IPMC." Such state amendments to the IPMC are set out using corresponding chapter and section numbers of the IPMC numbering system. In addition, since Chapter 1 of the IPMC is not incorporated as part of the VMC, any reference to a provision of Chapter 1 of the IPMC in the provisions of Chapters 2 - 8 of the IPMC is generally invalid. However, where the purpose of such a reference would clearly correspond to a provision of Chapter 1 established herein, then the reference may be con-

strued to be a valid reference to such corresponding Chapter 1 provision.

101.5 Use of terminology and notes. The term "this code," or "the code," where used in the provisions of Chapter 1, in Chapters 2 - 8 of the IPMC, or in the state amendments to the IPMC, means the VMC, unless the context clearly indicates otherwise. The term "this code," or "the code," where used in a code or standard referenced in the IPMC, means that code or standard, unless the context clearly indicates otherwise. The term "USBC" where used in this code means the VCC unless the context clearly indicates otherwise. In addition, the use of notes in Chapter 1 is to provide information only and shall not be construed as changing the meaning of any code provision. Notes in the IPMC, in the codes and standards referenced in the IPMC, and in the state amendments to the IPMC, may modify the content of a related provision and shall be considered to be a valid part of the provision, unless the context clearly indicates otherwise.

101.6 Order of precedence. The provisions of this code shall be used as follows:

1. The provisions of Chapter 1 of this code supersede any provisions of Chapters 2 - 8 of the IPMC that address the same subject matter and impose differing requirements.
2. The provisions of Chapter 1 of this code supersede any provisions of the codes and standards referenced in the IPMC that address the same subject matter and impose differing requirements.
3. The state amendments to the IPMC supersede any provisions of Chapters 2 - 8 of the IPMC that address the same subject matter and impose differing requirements.
4. The state amendments to the IPMC supersede any provisions of the codes and standards referenced in the IPMC that address the same subject matter and impose differing requirements.
5. The provisions of Chapters 2 - 8 of the IPMC supersede any provisions of the codes and standards referenced in the IPMC that address the same subject matter and impose differing requirements.

101.7 Administrative provisions. The provisions of Chapter 1 establish administrative requirements, which include but are not limited to provisions relating to the

ADMINISTRATION

scope of the code, enforcement, fees, permits, inspections and disputes. Any provisions of Chapters 2 - 8 of the IPMC or any provisions of the codes and standards referenced in the IPMC which address the same subject matter to a lesser or greater extent are deleted and replaced by the provisions of Chapter 1. Further, any administrative requirements contained in the state amendments to the IPMC shall be given the same precedence as the provisions of Chapter 1. Notwithstanding the above, where administrative requirements of Chapters 2 - 8 of the IPMC or of the codes and standards referenced in the IPMC are specifically identified as valid administrative requirements in Chapter 1 of this code or in the state amendments to the IPMC, then such requirements are not deleted and replaced.

Note: The purpose of this provision is to eliminate overlap, conflicts and duplication by providing a single standard for administrative, procedural and enforcement requirements of this code.

101.8 Definitions. The definitions of terms used in this code are contained in Chapter 2 along with specific provisions addressing the use of definitions. Terms may be defined in other chapters or provisions of the code and such definitions are also valid.

Note: The order of precedence outlined in Section 101.6 may be determinative in establishing how to apply the definitions in the IPMC and in the referenced codes and standards.

SECTION 102 PURPOSE AND SCOPE

102.1 Purpose. In accordance with § 36-103 of the Code of Virginia, the Virginia Board of Housing and Community Development may adopt and promulgate as part of the Virginia Uniform Statewide Building Code, building regulations that facilitate the maintenance, rehabilitation, development and reuse of existing buildings at the least possible cost to ensure the protection of the public health, safety and welfare. Further, in accordance with § 36-99 of the Code of Virginia, the purpose of this code is to protect the health, safety and welfare of the residents of the Commonwealth of Virginia, provided that buildings and structures should be permitted to be maintained at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier-free provisions for the physically handicapped and aged.

102.2 Scope. In accordance with § 36-98 of the Code of Virginia, the VMC shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies.

102.3 Exemptions. This code shall not regulate those buildings and structures specifically exempt from the VCC, except that existing industrialized buildings and manufactured homes shall not be exempt from this code.

SECTION 103 APPLICATION OF CODE

103.1 General. This code prescribes regulations for the maintenance of all existing buildings and structures and associated equipment, including regulations for unsafe buildings and structures.

103.2 Maintenance requirements. Buildings and structures shall be maintained and kept in good repair in accordance with the requirements of this code and when applicable in accordance with the USBC under which such building or structure was constructed. No provision of this code shall require alterations to be made to an existing building or structure or to equipment unless conditions are present which meet the definition of an unsafe structure or a structure unfit for human occupancy.

103.2.1 Maintenance of nonrequired fire protection systems. Nonrequired fire protection systems shall be maintained to function as originally installed. If any such systems are to be reduced in function or discontinued, approval shall be obtained from the building official in accordance with Section 103.8.1 of the VCC.

103.3 Continued approval. Notwithstanding any provision of this code to the contrary, alterations shall not be required to be made to existing buildings or structures which are occupied in accordance with a certificate of occupancy issued under any edition of the USBC.

103.4 Rental Inspections. In accordance with § 36-105.1:1 of the Code of Virginia, these provisions are applicable to rental inspection programs. For purposes of this section:

"Dwelling unit" means a building or structure or part thereof that is used for a home or residence by one or more persons who maintain a household.

"Owner" means the person shown on the current real estate assessment books or current real estate assessment records.

"Residential rental dwelling unit" means a dwelling unit that is leased or rented to one or more tenants. However, a dwelling unit occupied in part by the owner thereof shall not be construed to be a residential rental dwelling unit unless a tenant occupies a part of the dwelling unit that has its own cooking and sleep-

ing areas, and a bathroom, unless otherwise provided in the zoning ordinance by the local governing body.

The local governing body may adopt an ordinance to inspect residential rental dwelling units for compliance with this code and to promote safe, decent and sanitary housing for its citizens, in accordance with the following:

1. Except as provided for in subdivision 3 of this subsection, the dwelling units shall be located in a rental inspection district established by the local governing body in accordance with this section; and
2. The rental inspection district is based upon a finding by the local governing body that (i) there is a need to protect the public health, safety and welfare of the occupants of dwelling units inside the designated rental inspection district; (ii) the residential rental dwelling units within the designated rental inspection district are either (a) blighted or in the process of deteriorating or (b) the residential rental dwelling units are in the need of inspection by the building department to prevent deterioration, taking into account the number, age and condition of residential dwelling rental units inside the proposed rental inspection district; and (iii) the inspection of residential rental dwelling units inside the proposed rental inspection district is necessary to maintain safe, decent and sanitary living conditions for tenants and other residents living in the proposed rental inspection district. Nothing in this section shall be construed to authorize one or more locality-wide rental inspection districts and a local governing body shall limit the boundaries of the proposed rental inspection districts to such areas of the locality that meet the criteria set out in this subsection; or
3. An individual residential rental dwelling unit outside of a designated rental inspection district is made subject to the rental inspection ordinance based upon a separate finding for each individual dwelling unit by the local governing body that (i) there is a need to protect the public health, welfare and safety of the occupants of that individual dwelling unit; (ii) the individual dwelling unit is either (a) blighted or (b) in the process of deteriorating; or (iii) there is evidence of violations of this code that affect the safe, decent and sanitary living conditions for tenants living in such individual dwelling unit.

For purposes of this section, the local governing body may designate a local government agency other than the building department to perform all or part of the duties

contained in the enforcement authority granted to the building department by this section.

Before adopting a rental inspection ordinance and establishing a rental inspection district or an amendment to either, the governing body of the locality shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the locality.

Upon adoption by the local governing body of a rental inspection ordinance, the building department shall make reasonable efforts to notify owners of residential rental dwelling units in the designated rental inspection district, or their designated managing agents, and to any individual dwelling units subject to the rental inspection ordinance, not located in a rental inspection district, of the adoption of such ordinance, and provide information and an explanation of the rental inspection ordinance and the responsibilities of the owner thereunder.

The rental inspection ordinance may include a provision that requires the owners of dwelling units in a rental inspection district to notify the building department in writing if the dwelling unit of the owner is used for residential rental purposes. The building department may develop a form for such purposes. The rental inspection ordinance shall not include a registration requirement or a fee of any kind associated with the written notification pursuant to this subdivision. A rental inspection ordinance may not require that the written notification from the owner of a dwelling unit subject to a rental inspection ordinance be provided to the building department in less than 60 days after the adoption of a rental inspection ordinance. However, there shall be no penalty for the failure of an owner of a residential rental dwelling unit to comply with the provisions of this subsection, unless and until the building department provides personal or written notice to the property owner, as provided in this section. In any event, the sole penalty for the willful failure of an owner of a dwelling unit who is using the dwelling unit for residential rental purposes to comply with the written notification requirement shall be a civil penalty of up to \$50. For purposes of this subsection, notice sent by regular first-class mail to the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed compliance with this requirement.

Upon establishment of a rental inspection district in accordance with this section, the building department may, in conjunction with the written notifications as provided for above, proceed to inspect dwelling units in the designated rental inspection district to determine if the dwelling units are being used as a residential rental property and for compliance with the provisions of this code that affect the

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safe, decent and sanitary living conditions for the tenants of such property.

If a multifamily development has more than 10 dwelling units, in the initial and periodic inspections, the building department shall inspect only a sampling of dwelling units, of not less than two and not more than 10% of the dwelling units, of a multifamily development, that includes all of the multifamily buildings that are part of that multifamily development. In no event, however, shall the building department charge a fee authorized by this section for inspection of more than 10 dwelling units. If the building department determines upon inspection of the sampling of dwelling units that there are violations of this code that affect the safe, decent and sanitary living conditions for the tenants of such multifamily development, the building department may inspect as many dwelling units as necessary to enforce these provisions, in which case, the fee shall be based upon a charge per dwelling unit inspected, as otherwise provided in the fee schedule established pursuant to this section.

Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department has the authority under these provisions to require the owner of the dwelling unit to submit to such follow-up inspections of the dwelling unit as the building department deems necessary, until such time as the dwelling unit is brought into compliance with the provisions of this code that affect the safe, decent and sanitary living conditions for the tenants.

Except as provided for above, following the initial inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department may inspect any residential rental dwelling unit in a rental inspection district, that is not otherwise exempted in accordance with this section, no more than once each calendar year.

Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance for compliance with these provisions, provided that there are no violations of this code that affect the safe, decent and sanitary living conditions for the tenants of such residential rental dwelling unit, the building department shall provide, to the owner of such residential rental dwelling unit, an exemption from the rental inspection ordinance for a minimum of four years. Upon the sale of a residential rental dwelling unit, the building department may perform a periodic inspection as provided above, subsequent to such sale. If a residential rental dwelling unit has been issued a certificate of occupancy within the last four years, an exemption shall be granted for a minimum period of four years from the date of the issuance of the certificate of occupancy by the building department. If the residential rental dwelling unit becomes in violation of this code dur-

ing the exemption period, the building department may revoke the exemption previously granted under this section.

A local governing body may establish a fee schedule for enforcement of these provisions, which includes a per dwelling unit fee for the initial inspections, follow-up inspections and periodic inspections under this section.

The provisions of this section shall not in any way alter the rights and obligations of landlords and tenants pursuant to the applicable provisions of Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia.

The provisions of this section shall not alter the duties or responsibilities of the local building department under § 36-105 of the Code of Virginia to enforce the USBC.

Unless otherwise provided for in § 36-105.1:1 of the Code of Virginia, penalties for violation of this section shall be the same as the penalties provided for violations of other sections of the USBC.

SECTION 104 ENFORCEMENT, GENERALLY

104.1 Scope of enforcement. This section establishes the requirements for enforcement of this code in accordance with § 36-105 of the Code of Virginia. The local governing body may also inspect and enforce the provisions of the USBC for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

If the local building department receives a complaint that a violation of this code exists that is an immediate and imminent threat to the health or safety of the owner, tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby building or structure, and the owner, occupant, or tenant of the building or structure that is the subject of the complaint has refused to allow the code official or his agent to have access to the subject building or structure, the code official or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and request that the magistrate or court grant the code official or his agent an inspection warrant to enable the code official or his agent to enter the subject building or structure for the purpose of determining whether violations of this code exist. The code official or his agent shall make a reasonable effort to obtain consent from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.

Note: Generally, official action must be taken by the local government to enforce the VMC. Consultation with the legal counsel of the jurisdiction when initiating or changing such action is advised.

104.1.1 Transfer of ownership. In accordance with § 36-105 of the Code of Virginia, if the local building department has initiated an enforcement action against the owner of a building or structure and such owner subsequently transfers the ownership of the building or structure to an entity in which the owner holds an ownership interest greater than 50%, the pending enforcement action shall continue to be enforced against the owner.

104.2 Fees. In accordance with § 36-105 of the Code of Virginia, fees may be levied by the local governing body in order to defray the cost of enforcement and appeals.

104.3 State buildings. In accordance with § 36-98.1 of the Code of Virginia, this code shall be applicable to state-owned buildings and structures. Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for state-owned buildings.

104.3.1 Certification of state enforcement personnel. State enforcement personnel shall comply with the applicable requirements of Sections 104.4.2 through 104.4.4 for certification, periodic maintenance training, and continuing education.

104.4 Local enforcing agency. In jurisdictions enforcing this code, the local governing body shall designate the agency within the local government responsible for such enforcement and appoint a code official. The local governing body may also utilize technical assistants to assist the code official in the enforcement of this code. A permanently appointed code official shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. DHCD shall be notified by the appointing authority within 30 days of the appointment or release of a permanent or acting code official and within 60 days after retaining or terminating a technical assistant.

Note: Code officials and technical assistants are subject to sanctions in accordance with the VCS.

104.4.1 Qualifications of code official and technical assistants. The code official shall have at least five years of building experience as a licensed professional engineer or architect, building, fire or trade inspector, contractor, housing inspector or superintendent of building, fire or trade construction or at least five years of building experience after obtaining a degree in architecture or engineering, with at least three years

in responsible charge of work. Any combination of education and experience that would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The code official shall have general knowledge of sound engineering practice in respect to the design and construction of structures, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

A technical assistant shall have at least three years of experience and general knowledge in at least one of the following areas: building construction, building, fire or housing inspections, plumbing, electrical or mechanical trades, fire protection, elevators or property maintenance work. Any combination of education and experience which would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The locality may establish additional certification requirements.

104.4.2 Certification of code official and technical assistants. An acting or permanent code official shall be certified as a code official in accordance with the VCS within one year after being appointed as acting or permanent code official. A technical assistant shall be certified in the appropriate subject area within 18 months after becoming a technical assistant. When required by a locality to have two or more certifications, a technical assistant shall obtain the additional certifications within three years from the date of such requirement.

Exception: A code official or technical assistant in place prior to April 1, 1995, shall not be required to meet the certification requirements in this section while continuing to serve in the same capacity in the same locality.

104.4.3 Noncertified code official. Except for a code official exempt from certification under the exception to Section 104.4.2, any acting or permanent code official who is not certified as a code official in accordance with the VCS shall attend the core module of the Virginia Building Code Academy or an equivalent course in an individual or regional code academy accredited by DHCD within 180 days of appointment. This requirement is in addition to meeting the certification requirement in Section 104.4.2.

104.4.4 Requirements for periodic maintenance training and education. Code officials and technical assistants shall attend periodic maintenance training as designated by DHCD. In addition to the periodic

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maintenance training required above, code officials and technical assistants shall attend 16 hours of continuing education every two years as approved by DHCD. If a code official or technical assistant possesses more than one BHCD certificate, the 16 hours shall satisfy the continuing education requirement for all BHCD certificates.

104.4.5 Conflict of interest. The standards of conduct for code officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

104.4.6 Records. The local enforcing agency shall retain a record of applications received, permits, certificates, notices and orders issued, fees collected and reports of inspections in accordance with The Library of Virginia's General Schedule Number Six.

104.5 Powers and duties, generally. The code official shall enforce this code as set out herein and as interpreted by the State Review Board and shall issue all necessary notices or orders to ensure compliance with the code.

104.5.1 Delegation of authority. The code official may delegate powers and duties except where such authority is limited by the local government. When such delegations are made, the code official shall be responsible for assuring that they are carried out in accordance with the provisions of this code.

104.5.2 Issuance of modifications. Upon written application by an owner or an owner's agent, the code official may approve a modification of any provision of this code provided the spirit and intent of the code are observed and public health, welfare and safety are assured. The decision of the code official concerning a modification shall be made in writing and the application for a modification and the decision of the code official concerning such modification shall be retained in the permanent records of the local enforcing agency.

104.5.2.1 Substantiation of modification. The code official may require or may consider a statement from a professional engineer, architect or other person competent in the subject area of the application as to the equivalency of the proposed modification.

104.5.3 Inspections. The code official may inspect buildings or structures to determine compliance with this code and shall carry proper credentials when performing such inspections. The code official is authorized to engage such expert opinion as deemed neces-

sary to report upon unusual, detailed, or complex technical issues in accordance with local policies.

104.5.3.1 Observations. When, during an inspection, the code official or authorized representative observes an apparent or actual violation of another law, ordinance, or code not within the official's authority to enforce, such official shall report the findings to the official having jurisdiction in order that such official may institute the necessary measures.

104.5.3.2 Approved inspection agencies and individuals. The code official may accept reports of inspections or tests from individuals or inspection agencies approved in accordance with the code official's written policy required by Section 104.5.3.3. The individual or inspection agency shall meet the qualifications and reliability requirements established by the written policy. Reports of inspections by approved individuals or agencies shall be in writing, shall indicate if compliance with the applicable provisions of this code have been met, and shall be certified by the individual inspector or by the responsible officer when the report is from an agency. The code official shall review and approve the report unless there is cause to reject it. Failure to approve a report shall be in writing within five working days of receiving it, stating the reasons for rejection.

104.5.3.3 Third-party inspectors. Each code official charged with the enforcement of this code and who accepts third-party reports shall have a written policy establishing the minimum acceptable qualifications for third-party inspectors. The policy shall include the format and time frame required for submission of reports, any prequalification or preapproval requirements before conducting a third-party inspection, and any other requirements and procedures established by the code official.

104.5.3.4 Qualifications. In determining third-party qualifications, the code official may consider such items as DHCD inspector certification, other state or national certifications, state professional registrations, related experience, education, and any other factors that would demonstrate competency and reliability to conduct inspections.

104.5.4 Notices, reports and orders. Upon findings by the code official that violations of this code exist, the code official shall issue a correction notice or notice of violation to the owner or the person responsible for the maintenance of the structure. Work done to correct violations of this code subject to the permit,

inspection and approval provisions of the VCC shall not be construed as authorization to extend the time limits established for compliance with this code.

104.5.4.1 Correction notice. The correction notice shall be a written notice of the defective conditions. The correction notice shall require correction of the violation or violations within a reasonable time unless an emergency condition exists as provided under the unsafe building provisions of Section 105. Upon request, the correction notice shall reference the code section that serves as the basis for the defects and shall state that such defects shall be corrected and reinspected in a reasonable time designated by the code official.

104.5.4.2 Notice of violation. If the code official determines there are violations of this code other than those for unsafe structures, unsafe equipment or structures unfit for human occupancy under Section 105, the code official may issue a notice of violation to be communicated promptly in writing to the owner or the person responsible for the maintenance or use of the building or structure in lieu of a correction notice as provided for in Section 104.5.4.1. In addition, the code official shall issue a notice of violation for any uncorrected violation remaining from a correction notice established in Section 104.5.4.1. A notice of violation shall be issued by the code official before initiating legal proceedings unless the conditions violate the unsafe building conditions of Section 105 and the provisions established therein are followed. The code official shall provide the section numbers to the owner for any code provision cited in the notice of violation. The notice shall require correction of the violation or violations within a reasonable time unless an emergency condition exists as provided under the building provisions of Section 105. The owner or person to whom the notice of violation has been issued shall be responsible for contacting the code official within the time frame established for any re-inspections to assure the violations have been corrected. The code official will be responsible for making such inspection and verifying the violations have been corrected. In addition, the notice of violation shall indicate the right of appeal by referencing the appeals section of this code.

104.5.5 Coordination of inspections. The code official shall coordinate inspections and administrative orders with any other state or local agencies having related inspection authority and shall coordinate those inspections required by the Virginia Statewide Fire Prevention Code (13VAC5-51) for maintenance of fire protection devices, equipment and assemblies so

that the owners and occupants will not be subjected to numerous inspections or conflicting orders.

Note: The Fire Prevention Code requires the fire official to coordinate such inspections with the code official.

104.5.6 Further action when violation not corrected. If the responsible party has not complied with the notice of violation, the code official shall submit a written request to the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality so authorizes, the code official may issue or obtain a summons or warrant.

104.5.7 Penalties and abatement. Penalties for violations of this code shall be as set out in § 36-106 of the Code of Virginia. The successful prosecution of a violation of the code shall not preclude the institution of appropriate legal action to require correction or abatement of a violation.

SECTION 105 UNSAFE STRUCTURES OR STRUCTURES UNFIT FOR HUMAN OCCUPANCY

105.1 General. This section shall apply to existing structures which are classified as unsafe or unfit for human occupancy. All conditions causing such structures to be classified as unsafe or unfit for human occupancy shall be remedied or as an alternative to correcting such conditions, the structure may be vacated and secured against public entry or razed and removed. Vacant and secured structures shall still be subject to other applicable requirements of this code. Notwithstanding the above, when the code official determines that an unsafe structure or a structure unfit for human occupancy constitutes such a hazard that it should be razed or removed, then the code official shall be permitted to order the demolition of such structures in accordance with applicable requirements of this code.

Note: Structures which become unsafe during construction are regulated under the VCC.

105.2 Inspection of unsafe or unfit structures. The code official shall inspect any structure reported or discovered as unsafe or unfit for human habitation and shall prepare a report to be filed in the records of the local enforcing agency and a copy issued to the owner. The report shall include the use of the structure and a description of the nature and extent of any conditions found.

105.3 Unsafe conditions not related to maintenance. When the code official finds a condition that constitutes a

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serious and dangerous hazard to life or health in a structure constructed prior to the initial edition of the USBC and when that condition is of a cause other than improper maintenance or failure to comply with state or local building codes that were in effect when the structure was constructed, then the code official shall be permitted to order those minimum changes to the design or construction of the structure to remedy the condition.

105.3.1 Limitation to requirements for retrofitting.

In accordance with Section 103.2, this code does not generally provide for requiring the retrofitting of any structure. However, conditions may exist in structures constructed prior to the initial edition of the USBC because of faulty design or equipment that constitute a danger to life or health or a serious hazard. Any changes to the design or construction required by the code official under this section shall be only to remedy the serious hazard or danger to life or health and such changes shall not be required to fully comply with the requirements of the VCC applicable to newly constructed buildings or structures.

105.4 Notice of unsafe structure or structure unfit for human occupancy.

When 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. The notice shall specify the corrections necessary to comply with this code, or if the structure is required to be demolished, the notice shall specify the time period within which the demolition must occur. Requirements in Section 104.5.4 for notices of violation are also applicable to notices issued under this section to the extent that any such requirements are not in conflict with the requirements of this section.

Note: Whenever possible, the notice should also be given to any tenants of the affected structure.

105.4.1 Vacating unsafe structure. If the code official determines there is actual and immediate danger to the occupants or public, or when life is endangered by the occupancy of an unsafe structure, the code official shall be authorized to order the occupants to immediately vacate the unsafe structure. When an unsafe structure is ordered to be vacated, the code official shall post a notice with the following wording at each entrance: "THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY (OR USE) IS PROHIBITED BY THE CODE OFFICIAL." After posting, occupancy or use of the unsafe structure shall be prohibited except when authorized to enter to conduct inspections, make required repairs or as necessary to demolish the structure.

105.5 Posting of notice. If the notice is unable to be issued by personal service as required by Section 105.4, then the notice shall be sent by registered or certified mail to the last known address of the responsible party and a copy of the notice shall be posted in a conspicuous place on the premises.

105.6 Posting of placard. In the case of a structure unfit for human habitation, at the time the notice is issued, a placard with the following wording shall be posted at the entrance to the structure: "THIS STRUCTURE IS UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL."

In the case of an unsafe structure, if the notice is not complied with, a placard with the above wording shall be posted at the entrance to the structure. After a structure is placarded, entering the structure shall be prohibited except as authorized by the code official to make inspections, to perform required repairs or to demolish the structure. In addition, the placard shall not be removed until the structure is determined by the code official to be safe to occupy, nor shall the placard be defaced.

105.7 Revocation of certificate of occupancy. If a notice of unsafe structure or structure unfit for human habitation is not complied with within the time period stipulated on the notice, the code official shall be permitted to request the local building department to revoke the certificate of occupancy issued under the VCC.

105.8 Vacant and open structures. When an unsafe structure or a structure unfit for human habitation is open for public entry at the time a placard is issued under Section 105.6, the code official shall be permitted to authorize the necessary work to make such structure secure against public entry whether or not legal action to compel compliance has been instituted.

105.9 Emergency repairs and demolition. To the extent permitted by the locality, the code official may authorize emergency repairs to unsafe structures or structures unfit for human habitation when it is determined that there is an immediate danger of any portion of the unsafe structure or structure unfit for human habitation collapsing or falling and when life is endangered. Emergency repairs may also be authorized where there is a code violation resulting in the immediate serious and imminent threat to the life and safety of the occupants. The code official shall be permitted to authorize the necessary work to make the structure temporarily safe whether or not legal action to compel compliance has been instituted. In addition, whenever an owner of an unsafe structure or structure unfit for human habitation fails to comply with a notice to demolish issued under Section 105.4 in the time period stipulated, the code official shall be permitted to cause the structure to be demolished. In accordance with §§ 15.2-906 and 15.2-1115 of the Code of Virginia, the legal counsel of the locality

may be requested to institute appropriate action against the property owner to recover the costs associated with any such emergency repairs or demolition and every such charge that remains unpaid shall constitute a lien against the property on which the emergency repairs or demolition were made and shall be enforceable in the same manner as provided in Articles 3 (§ 58.1-3490 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1 of the Code of Virginia.

Note: Code officials and local governing bodies should be aware that other statutes and court decisions may impact on matters relating to demolition, in particular whether newspaper publication is required if the owner cannot be located and whether the demolition order must be delayed until the owner has been given the opportunity for a hearing. In addition, historic building demolition may be prevented by authority granted to local historic review boards in accordance with § 15.2-2306 of the Code of Virginia unless determined necessary by the code official.

105.10 Closing of streets. When necessary for public safety, the code official shall be permitted to order the temporary closing of sidewalks, streets, public ways or premises adjacent to unsafe or unfit structures and prohibit the use of such spaces.

SECTION 106 APPEALS

106.1 Establishment of appeals board. In accordance with § 36-105 of the Code of Virginia, there shall be established within each local enforcing agency a LBBCA. Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. The LBBCA for hearing appeals under the VCC shall be permitted to serve as the appeals board required by this section. The locality is responsible for maintaining a duly constituted LBBCA prepared to hear appeals within the time limits established in this section. The LBBCA shall meet as necessary to assure a duly constituted board, appoint officers as necessary, and receive such training on the code as may be appropriate or necessary from staff of the locality.

106.2 Membership of board. The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current

membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period. ✓

106.3 Officers and qualifications of members. The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA.

106.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

106.5 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. The applicant shall submit a written request for appeal to the LBBCA within 14 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and, in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision. ✓

106.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a period of up to 45 calendar days shall be permitted where the LBBCA has regularly scheduled monthly meetings. A longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar ✓

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days prior to the date of the hearing, except that a lesser time period shall be permitted if agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

106.7 Hearings and decision. All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the code official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be by resolution signed by the chairman and retained as part of the record of the appeal. Copies of the resolution shall be sent to all parties by certified mail. In addition, the resolution shall contain the following wording:

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

106.8 Appeals to the State Review Board. After final determination by the LBBCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with § 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the code official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the code official's decision. For appeals from a LBBCA, a copy of the code official's decision and the resolution of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the Office of the State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the code official's decision and other relevant information with the application for appeal to the State Review Board.

Procedures of the State Review Board are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no further appeal is made.

CHAPTER 2
DEFINITIONS

Change Section 201.3 of the IPMC to read:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the IBC, IFC, IFGC, IPC, IMC, International Existing Building Code, IRC, International Zoning Code or NFPA 70, such terms shall have the meanings ascribed to them as stated in those codes, except that terms defined in the VCC shall be used for this code and shall take precedence over other definitions.

Add the following definitions to Section 202 of the IPMC to read:

STRUCTURE UNFIT FOR HUMAN OCCUPANCY. An existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential equipment, or (ii) the required plumbing and sanitary facilities are inoperable.



UNSAFE EQUIPMENT. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment that is in such disrepair or condition that such equipment is determined by the code official to be dangerous to the health, safety and welfare of the occupants of a structure or the public.



UNSAFE STRUCTURE. An existing structure (i) determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public, (ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.



CHAPTER 3

GENERAL REQUIREMENTS

Delete Section 302.1 of the IPMC.

Change Section 302.2 of the IPMC to read:

302.2 Grading and drainage. All premises shall be graded and maintained to protect the foundation walls or slab of the structure from the accumulation and drainage of surface or stagnant water in accordance with the VCC.

Change Section 302.3 of the IPMC to read:

302.3 Sidewalks and driveways. All sidewalks, walkways, stairs, driveways, parking spaces and similar spaces regulated under the VCC shall be kept in a proper state of repair, and maintained free from hazardous conditions. Stairs shall comply with the requirements of Sections 305 and 702.

Delete Section 302.4 of the IPMC.

Change Section 302.5 of the IPMC to read:

302.5 Rodent harborage. All structures and adjacent premises shall be kept free from rodent harborage and infestation where such harborage or infestation adversely affects the structures.

Delete Sections 302.8 and 302.9 of the IPMC.

Delete Section 304.1.1 of the IPMC.

Change Section 304.7 of the IPMC to read:

304.7 Roofs and drainage. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall be discharged in a manner to protect the foundation or slab of buildings and structures from the accumulation of roof drainage.

Change Section 304.14 of the IPMC to read:

304.14 Insect screens. During the period from April 1 to December 1, every door, window and other outside opening required for ventilation of

habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every screen door used for insect control shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other approved means, such as mechanical ventilation, air curtains or insect repellent fans, are used.

Delete Sections 304.18, 304.18.1, 304.18.2 and 304.18.3 of the IPMC.

Delete Section 305.1.1 of the IPMC.

Add Section 305.7 to the IPMC to read:

305.7 Carbon monoxide alarms. Carbon monoxide alarms shall be maintained as approved.

Delete Section 306 of the IPMC in its entirety.

Change Section 308.1 of the IPMC to read as follows and delete the remaining provisions of Section 308:

308.1 Accumulation of rubbish and garbage. The interior of every structure shall be free from excessive accumulation of rubbish or garbage.

Change Section 309.1 of the IPMC to read:

309.1 Infestation. This section shall apply to the extent that insect and rodent infestation adversely affects a structure. All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation.

Add IPMC Section 310 Lead-Based Paint.

Add Section 310.1 to the IPMC to read:

CHAPTER 5

PLUMBING FACILITIES AND FIXTURE REQUIREMENTS

Add Section 505.5 to the IPMC to read:

505.5 Inspection and testing of backflow prevention assemblies. Inspection and testing shall comply with Sections 505.5.1 and 505.5.2.

Add Section 505.5.1 to the IPMC to read:

505.5.1 Inspections. Inspections shall be made of all backflow prevention assemblies and air gaps to determine whether they are operable.

Add Section 505.5.2 to the IPMC to read:

505.5.2 Testing. Reduced pressure principle backflow preventer assemblies, double check-valve assemblies, double-detector check valve assemblies and pressure vacuum breaker assemblies shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing procedure shall be performed in accordance with one of the following standards: ASSE 5010-1013-1, Sections 1 and 2; ASSE 5010-1015-1, Sections 1 and 2; ASSE 5010-1015-2; ASSE 5010-1015-3, Sections 1 and 2; ASSE 5010-1015-4, Sections 1 and 2; ASSE 5010-1020-1, Sections 1 and 2; ASSE 5010-1047-1, Sections 1, 2, 3 and 4; ASSE 5010-1048-1, Sections 1, 2, 3 and 4; ASSE 5010-1048-2; ASSE 5010-1048-3, Sections 1, 2, 3 and 4; ASSE 5010-1048-4, Sections 1, 2, 3 and 4; or CAN/CSA B64.10.

Change Section 507.1 of the IPMC to read:

507.1 General. Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall be discharged in a manner to protect the buildings and structures from the accumulation of overland water runoff.

CHAPTER 6

MECHANICAL AND ELECTRICAL REQUIREMENTS

Change Section 602 of the IPMC to read:

SECTION 602 HEATING AND COOLING FACILITIES

Change Section 602.1 of the IPMC to read:

602.1 Facilities required. Heating and cooling facilities shall be maintained and operated in structures as required by this section.

Change Section 602.2 of the IPMC to read:

602.2 Heat supply. Every owner and operator of a Group R-2 apartment building or other residential dwelling who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to 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. The code official may also consider modifications as provided in Section 104.5.2 when requested for unusual circumstances or may issue notice approving building owners to convert shared heating and cooling piping HVAC systems 14 calendar days before or after the established dates when extended periods of unusual temperatures merit modifying these dates.

Exception: When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the IPC.

Add Section 602.2.1 to the IPMC to read:

602.2.1 Prohibited use. In dwelling units subject to Section 602.2, one or more unvented room heaters shall not be used as the sole source of comfort heat in a dwelling unit.

Change Section 602.3 of the IPMC to read:

602.3 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from October 1 to May 15 to maintain a tempera-

ture of not less than 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

Change Section 602.4 of the IPMC to read:

602.4 Cooling supply. Every owner and operator of a Group R-2 apartment building who rents, leases or lets one or more dwelling units, rooming units or guestrooms on terms, either expressed or implied, to furnish cooling to the occupants thereof shall supply cooling during the period from May 15 to October 1 to maintain a temperature of not more than 80°F (27°C) in all habitable rooms. The code official may also consider modifications as provided in Section 104.5.2 when requested for unusual circumstances or may issue notice approving building owners to convert shared heating and cooling piping HVAC systems 14 calendar days before or after the established dates when extended periods of unusual temperatures merit modifying these dates.

Exception: When the outdoor temperature is higher than the summer design temperature for the locality, maintenance of the room temperature shall not be required provided that the cooling system is operating at its full design capacity. The summer outdoor design temperature for the locality shall be as indicated in the IECC.

Change the exception to Section 604.3.1.1 of the IPMC to read:

Exception: The following equipment shall be allowed to be repaired or reused where an inspection report from the equipment manufacturer, an approved representative of the equipment manufacturer, a third party licensed or certified electrician, or an electrical engineer indicates that the exposed equipment has not sustained damage that requires replacement:

1. Enclosed switches, rated 600 volts or less;

MECHANICAL AND ELECTRICAL REQUIREMENTS

2. Busway, rated 600 volts or less;
3. Panelboards, rated 600 volts or less;
4. Switchboards, rated 600 volts or less;
5. Fire pump controllers, rated 600 volts or less;
6. Manual and magnetic motor controllers;
7. Motor control centers;
8. Alternating current high-voltage circuit breakers;
9. Low-voltage power circuit breakers;
10. Protective relays, meters and current transformers;
11. Low- and medium-voltage switchgear;
12. Liquid-filled transformers;
13. Cast-resin transformers;
14. Wire or cable that is suitable for wet locations and whose ends have not been exposed to water;
15. Wire or cable, not containing fillers, that is suitable for wet locations and whose ends have not been exposed to water;
16. Luminaires that are listed as submersible;
17. Motors;
18. Electronic control, signaling and communication equipment.

specification by an approved agency or through agreement with other local certified elevator inspectors. An approved agency includes any individual, partnership or corporation who has met the certification requirements established by the VCS.

Change Section 606.1 to the IPMC to read:

606.1 General. Elevators, dumbwaiters and escalators shall be maintained in compliance with ASME A17.1. The most current certificate of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter, be available for public inspection in the office of the building operator or be posted in a publicly conspicuous location approved by the code official. An annual periodic inspection and test is required of elevators and escalators. A locality shall be permitted to require a six-month periodic inspection and test. All periodic inspections shall be performed in accordance with Section 8.11 of ASME A17.1. The code official may also provide for such in-

Virginia Maintenance Code



CHAPTER 5. PLUMBING FACILITIES AND FIXTURE REQUIREMENTS

SECTION 501

GENERAL

501.1 Scope.

The provisions of this chapter shall govern the minimum plumbing systems, facilities and plumbing fixtures to be provided.

501.2 Responsibility.

The *owner* of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any structure or *premises* which does not comply with the requirements of this chapter.

SECTION 502

REQUIRED FACILITIES

[P]502.1 Dwelling units.

Every *dwelling unit* shall contain its own bathtub or shower, lavatory, water closet and kitchen sink which shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory.

[P]502.2 Rooming houses.

At least one water closet, lavatory and bathtub or shower shall be supplied for each four *rooming units*.

[P]502.3 Hotels.

Where private water closets, lavatories and baths are not provided, one water closet, one lavatory and one bathtub or shower having access from a public hallway shall be provided for each ten *occupants*.

[P]502.4 Employees' facilities.

A minimum of one water closet, one lavatory and one drinking facility shall be available to employees.

[P]502.4.1 Drinking facilities.

Drinking facilities shall be a drinking fountain, water cooler, bottled water cooler or disposable cups next to a sink or water dispenser. Drinking facilities shall not be located in *toilet rooms* or *bathrooms*.

[P]502.5 Public toilet facilities.

Public toilet facilities shall be maintained in a safe sanitary and working condition in accordance with the *International Plumbing Code*. Except for periodic maintenance or cleaning, public access and use shall be provided to the toilet facilities at all times during *occupancy* of the *premises*.

SECTION 503

TOILET ROOMS

[P]503.1 Privacy.

Toilet rooms and *bathrooms* shall provide privacy and shall not constitute the only passageway to a hall or other space, or to the exterior. A door and interior locking device shall be provided for all common or shared *bathrooms* and *toilet rooms* in a multiple dwelling.

[P]503.2 Location.

Toilet rooms and *bathrooms* serving hotel units, rooming units or dormitory units or *housekeeping units*, shall have access by traversing a maximum of one flight of stairs and shall have access from a common hall or passageway.

[P]503.3 Location of employee toilet facilities.

Toilet facilities shall have access from within the employees' working area. The required toilet facilities shall be located a maximum of one story above or below the employees' working area and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m). Employee facilities shall either be separate facilities or combined employee and public facilities.

Exception: Facilities that are required for employees in storage structures or kiosks, which are located in adjacent structures under the same ownership, lease or control, shall not exceed a travel distance of 500 feet (152 m) from the employees' regular working area to the facilities.

[P]503.4 Floor surface.

In other than *dwelling units*, every *toilet room* floor shall be maintained to be a smooth, hard, nonabsorbent surface to permit such floor to be easily kept in a clean and sanitary condition.

SECTION 504

PLUMBING SYSTEMS AND FIXTURES

[P]504.1 General.

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.

[P]504.2 Fixture clearances.

Plumbing fixtures shall have adequate clearances for usage and cleaning.

[P]504.3 Plumbing system hazards.

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, inadequate venting, cross connection, backsiphonage, improper installation, *deterioration* or damage or for similar reasons, the *code official* shall require the defects to be corrected to eliminate the hazard.

SECTION 505

WATER SYSTEM

505.1 General.

Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an *approved* private water system. All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the *International Plumbing Code*.

[P]505.2 Contamination.

The water supply shall be maintained free from contamination, and all water inlets for plumbing fixtures shall be located above the flood-level rim of the fixture. Shampoo basin faucets, janitor sink faucets and other hose bibs or faucets to which hoses are attached and left in place, shall be protected by an approved atmospheric-type vacuum breaker or an approved permanently attached hose connection vacuum breaker.

505.3 Supply.

The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

505.4 Water heating facilities.

Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a minimum temperature of 110°F (43°C). A gas-burning water heater shall not be located in any *bathroom, toilet room, bedroom* or other occupied room normally kept closed, unless adequate combustion air is provided. An *approved* combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

505.5 Inspection and testing of backflow prevention assemblies.

Inspection and testing shall comply with Sections 505.5.1 and 505.5.2.

505.5.1 Inspections.

Inspections shall be made of all backflow prevention assemblies and air gaps to determine whether they are operable.

505.5.2 Testing.

Reduced pressure principle backflow preventer assemblies, double check-valve assemblies, double-detector check valve assemblies and pressure vacuum breaker assemblies shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing procedure shall be performed in accordance with one of the following standards: ASSE 5010-1013-1, Sections 1 and 2; ASSE 5010-1015-1, Sections 1 and 2; ASSE 5010-1015-2; ASSE 5010-1015-3, Sections 1 and 2; ASSE 5010-1015-4, Sections 1 and 2; ASSE 5010-1020-1, Sections 1 and 2; ASSE 5010-1047-1, Sections 1, 2, 3 and 4; ASSE 5010-1048-1, Sections 1, 2, 3 and 4; ASSE 5010-1048-2; ASSE 5010-1048-3, Sections 1, 2, 3 and 4; ASSE 5010-1048-4, Sections 1, 2, 3 and 4; or CAN/CSA B64.10.

SECTION 506

SANITARY DRAINAGE SYSTEM

[P]506.1 General.

All plumbing fixtures shall be properly connected to either a public sewer system or to an *approved* private sewage disposal system.

[P]506.2 Maintenance.

Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

[P]506.3 Grease interceptors.

Grease interceptors and automatic grease removal devices shall be maintained in accordance with this code and the manufacturer's installation instructions. Grease interceptors and automatic grease removal devices shall be regularly serviced and cleaned to prevent the discharge of oil, grease, and other substances harmful or hazardous to the building drainage system, the public sewer, the private sewage disposal system or the sewage treatment plant or processes. All records of maintenance, cleaning and repairs shall be available for inspection by the code official.

SECTION 507
STORM DRAINAGE

507.1 General.

Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall be discharged in a manner to protect the buildings and structures from the accumulation of overland water runoff.



SECTION 101
GENERAL

101.1 Short title. The Virginia Uniform Statewide Building Code, Part III, Maintenance, may be cited as the "Virginia Maintenance Code," or as the "VMC."



105.2 Inspection of unsafe or unfit structures. The code official shall inspect any structure reported or discovered as unsafe or unfit for human habitation and shall prepare a report to be filed in the records of the local enforcing agency and a copy issued to the owner. The report shall include the use of the structure and a description of the nature and extent of any conditions found.



2012

Virginia Maintenance Code

105.4.1 Vacating unsafe structure. If the code official determines there is actual and immediate danger to the occupants or public, or when life is endangered by the occupancy of an unsafe structure, the code official shall be authorized to order the occupants to immediately vacate the unsafe structure. When an unsafe structure is ordered to be vacated, the code official shall post a notice with the following wording at each entrance: "THIS STRUCTURE IS UNSAFE AND ITS OCCUPANCY (OR USE) IS PROHIBITED BY THE CODE OFFICIAL." After posting, occupancy or use of the unsafe structure shall be prohibited except when authorized to enter to conduct inspections, make required repairs or as necessary to demolish the structure.

2012

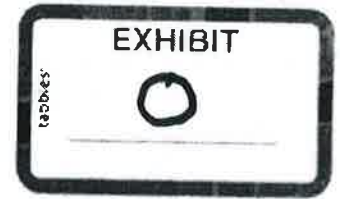
Virginia Maintenance Code



104.5.4.2 Notice of violation. If the code official determines there are violations of this code other than those for unsafe structures, unsafe equipment or structures unfit for human occupancy under Section 105, the code official may issue a notice of violation to be communicated promptly in writing to the owner or the person responsible for the maintenance or use of the building or structure in lieu of a correction notice as provided for in Section 104.5.4.1. In addition, the code official shall issue a notice of violation for any uncorrected violation remaining from a correction notice established in Section 104.5.4.1. A notice of violation shall be issued by the code official before initiating legal proceedings unless the conditions violate the unsafe building conditions of Section 105 and the provisions established therein are followed. The code official shall provide the section



VIRGINIA DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT



CAMS SYSTEM LINK 
Applications and Registration

HomeBuilding CodesBuilding and Fire CodesRegulationsVirginia Uniform Statewide Building Code (USBC)

VIRGINIA UNIFORM STATEWIDE BUILDING CODE (USBC)

Program Contacts

Jeff Brown, MCP
Director of State Building Codes Office

Jeff.Brown@dhcd.virginia.gov

The Virginia Uniform Statewide Building Code (USBC) contains the building regulations that must be complied with when constructing a new building, structure, or an addition to an existing building. They must also be used when maintaining or repairing an existing building or renovating or changing the use of a building or structure.

From Internet, at URL:

<http://www.dhcd.virginia.gov/index.php/va-building-codes/building-and-fire-codes/regulations/uniform-statewide-building-code-usbc.html>



I. **U.S. Constitution: Property Rights**

How does the Constitution protect your property?

The Contracts Clause

Another provision related to property rights is the Constitution's prohibition against any state law "impairing the Obligation of Contracts." On its face, this provision – which appears in Article I of the Constitution's main text – would seem to prohibit any law that impairs a person's contractual right to acquire or use property.

Life, Liberty and Property

Both the Fifth and the Fourteenth Amendments to the Constitution provide "due process" protections for "life, liberty and property."

At: <https://www.quickanddirtytips.com/business-career/legal/constitution-101-property-rights>

II. **Virginia Constitution**

Article I. Bill of Rights

Section 11. Due process of law; obligation of contracts; taking or damaging of private property; prohibited discrimination; jury trial in civil cases

That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts.

<https://law.lis.virginia.gov/constitution/article1/section11/>

III. **Case Law**. The lesson from the two cases below is that: The contract is King in Virginia. "Even in an extreme case such as the Granby Towers mess, the Courts in Virginia will stick to the contract."

Granby Towers case in Norfolk, Virginia regarding claims by contractors, subcontractors and construction material suppliers. And,

Turner Construction and Universal Concrete case.

At: <https://constructionlawva.com/affirmed-the-contract-is-king-in-virginia/>

Created Date/Time: 08/02/2018 08:59:36 AM
 Customer Number: 00045773
 Account Number: 0006089
 Service Address: 2112 OAKWOOD LANE
 Mailing Address:
 AML LLC
 MICHAEL-DOROTHY MORRISSEY
 2112 OAKWOOD LANE
 HENRICO VA 23228-5734

Customer/Account Transaction History

Trans Date	Transaction	Description	Amount	Balance
8/2/2018 0:00	Reconnection Charge	Reconnection Charge	(\$35.00)	\$0.00
7/27/2018 0:00	Cycle Billing Due: 08/27/2018	Cycle Billing Due: 08/27/2018	\$156.97	\$794.93
7/11/2018 0:00	Payment - Cashier	Payment - Thank You	(\$756.00)	\$637.96
7/6/2018 0:00	Delinquent Charge	Delinquent Charge	\$1.00	\$1,393.96
6/26/2018 0:00	Reconnection Charge	Reconnection Charge	\$35.00	\$1,392.96
6/18/2018 0:00	Reconnection Charge	Reconnection Charge	\$35.00	\$1,357.96
6/13/2018 0:00	Reconnection Charge	Reconnection Charge	\$35.00	\$1,322.96
5/29/2018 0:00	Cycle Billing Due: 06/28/2018	Cycle Billing Due: 06/28/2018	\$274.10	\$1,287.96
5/7/2018 0:00	Delinquent Charge	Delinquent Charge	\$1.00	\$1,013.86
3/30/2018 0:00	Cycle Billing Due: 04/30/2018	Cycle Billing Due: 04/30/2018	\$321.07	\$1,012.86
3/6/2018 0:00	Delinquent Charge	Delinquent Charge	\$1.00	\$691.79
2/21/2018 0:00	Reconnection Charge	Reconnection Charge	\$35.00	\$690.79
1/30/2018 0:00	Cycle Billing Due: 03/01/2018	Cycle Billing Due: 03/01/2018	\$321.07	\$655.79
1/9/2018 0:00	Delinquent Charge	Delinquent Charge	\$1.00	\$334.72
11/30/2017 0:00	Cycle Billing Due: 01/02/2018	Cycle Billing Due: 01/02/2018	\$163.10	\$333.72
11/9/2017 0:00	Delinquent Charge	Delinquent Charge	\$1.00	\$170.62
9/27/2017 0:00	Cycle Billing Due: 10/27/2017	Cycle Billing Due: 10/27/2017	\$169.62	\$169.62
8/30/2017 0:00	Payment - Paymentus Internet	Payment - Thank You	(\$184.54)	\$0.00



RECEIVED

JUL 11 2018

COUNTY OF HENRICO
BUILDING INSPECTIONS

Henrico County
Dept. of Public Utilities
4301 E. Parham Rd
Henrico, VA 23228
(804) 501-4275

7/11/2018 02:20 PM Cashier 0714
T/Ref 0300016837 Reg 0300 Tran No 6619
Cash Report: 180711-01 for 7/11/2018

03 - Public Utilities
CIS Infinity Utility Bills
Validation Number: 015133 \$756.00
=====

Total	\$756.00
Check	(\$756.00)

Check No. 27728 :

Thank You for Your Payment.

Mr. Butler,

Here is a copy of the proof of
payment for 2112 Oakwood Lane. In
all honesty, I do not feel that
the diacorate will approve any
more funds.

Respectfully,

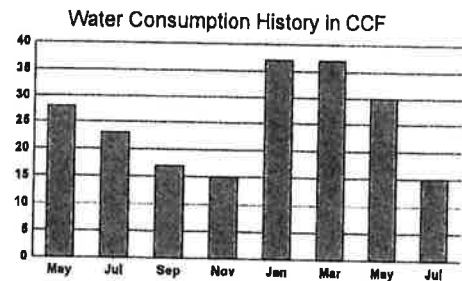
David E. Castle



ACCOUNT SUMMARY

PREVIOUS BALANCE	ADJUSTMENTS	PAYMENTS	NEW CHARGES	BALANCE DUE				
1,287.96	1.00	756.00CR	261.97	\$794.93				
For Inquiries Phone (804) 501-4275		Refer to Account No. 0006089-00045773	Service Address 2112 OAKWOOD LANE					
Date of Bill: 07/27/2018			Date Payment Due: 08/27/2018					
SERVICE	METER	BILLING PERIOD	DAYS	PREV. READ	CUR. READ	UNITS	MULTIPLIER	USAGE
Water	46821651	05/24/2018 07/25/2018	62	379	394	CCF	1	15

TRANSACTION DESCRIPTION	AMOUNT
Previous Balance	\$1,287.96
Delinquent Charge	\$1.00
Payment - Thank You - 07/11/2018	\$756.00CR
Water Charge - 15 CCF	\$64.33
Sewer Charge - 15 CCF	\$81.99
Refuse Service Charge	\$10.65
Reconnection Charge	\$105.00
Balance Due	\$794.93



NOTE: If the balance due includes an unpaid previous balance service disconnection could occur without additional notification. Please refer to the SERVICE RECONNECTION POLICY on the last page of your bill. Call 804-501-4275.

See back of bill for payment options

If paying by mail: Detach this portion and return it with your payment in the enclosed envelope



PLEASE ENTER ACCOUNT NUMBER ON YOUR CHECK

0006089000457730000794934

ACCOUNT NUMBER	BALANCE DUE	DUE DATE	AMOUNT ENCLOSED
0006089-00045773	\$794.93	08/27/2018	

MAKE CHECK PAYABLE TO COUNTY OF HENRICO

PLEASE ALLOW AT LEAST 5 BUSINESS DAYS FOR MAILING
PAY BY DUE DATE TO AVOID A \$1 PAST DUE CHARGE

AML LLC
MICHAEL-DOROTHY MORRISSEY
2112 OAKWOOD LANE
HENRICO VA 23228-5734

COUNTY OF HENRICO
P.O. BOX 90799
HENRICO, VA 23228-0799

12322857341211

12322807999901



Property Owner's Damages

(1) Compensatory

Expert witness, Mr. Wilson	\$300
Lay witness, Mr. Aims	\$200
Recording equipment rental	\$300
Owner's agent, time preparation	est. \$1000
Documents prepared and filed in the case	
Meeting with witnesses	
Research of applicable codes and case issues	
Travel, meeting expense \$40	
	<hr/>
	\$1,800

(2) Sanctions, punitive \$ _____

To be decided by the Board

Awarded:

Compensatory damages \$ _____

Sanctions, punitive damages \$ _____

SUBMITTED BOARD FINDINGS AND CONCLUSION

Property owner asks the Board to find:



Violation alleged and basis relied upon

1. The purpose of this hearing is to determine the validity of a Notice of Violation issued on July 9, 2018 by John Butler of Henrico County.
2. The sole reason for the alleged Violation is that there is "no water service at the home", as stated in the Notice.
3. Mr. Butler cites and relies up three sections of the Virginia Maintenance Code as support for issuing the Notice.

The reason for no water service

1. The reason that there is no water service is because Henrico County water department cut off the service due to non-payment of the water bill.
2. The home is occupied by two tenants who are on the written lease as the tenants, Adam Neilsen and Heather Patterson, and the landlord is listed by the County as AML, LLC.
3. Paragraph 5 of the written lease states that in essence that tenants are to pay their utility bills, as it states that tenants are to get all utilities set up in their own names. Paragaph 5 makes specific reference to the tenants transferring the water and trash pickup with Henrico County transferred to their names.
4. The Board finds the obligation to pay the water bill after the tenants moved into the home was the duty and obligation of the tenants and not of the landlord.
5. The approximate relevant dates are that on October 12, 2017 tenants signed the lease for rental of the home. On November 10, 2017, tenants moved into the home, with four children one who is still in

- diapers, and a mother-in-law from a previous marriage of the male tenant Mr. Neilsen. Thus seven people occupied the home.
6. In the early months of 2018, the County cut off water service and trash pickup service due to non-payment of the bill. The tenants for awhile cut the water back on by themselves. Detecting this some time later, the County came out and removed the entire meter section so the water could not be cut back on by the tenants.
 7. At no time from November 10, 2018 to the present have either tenant on the lease made any payment of any amount on the bills for water service and trash pickup.
 8. Trash continued to pill up and was eventually removed from the property by the agent for the landlord and a hired worker who made five truck runs to the County dump with trash from the property. Tenants continued to live in the home without running water and are continuing to do so at the present time, also with no arrangement made for trash pickup.

Relevance of the three code sections relied on

1. The three code sections relied on by Mr. Butler in his Notice of Violation do not address, nor do they relate to, who pays the water bill, and who, if anyone, is responsible when the tenant does not pay the water bill. Nor are the three sections relied upon relevant to whose fault it is when the County cuts off the water supply due to non-payment of a water bill.
2. In brief, the Virginia Maintenance Code, of which the three sections are a part, and the International Plumbing Code that is cited within one of the relied upon sections, deal with installation and maintenance of plumbing fixtures (Virginia Maintenance Code, Section 5). Its subject matter concerns the infrastructure, how and what type of plumbing is

to be installed to comply with the code. Both codes, and most importantly, the three sections of the Virginia Maintenance Code cited as the basis for the Violation Notice, are irrelevant to who pays the water bill and whose fault it is when the water is cut off for non-payment.

3. The answer to those questions lies elsewhere, perhaps in the well-established right in Virginia to private contract, which in this instance, would be the lease agreement between tenant and landlord. At paragraph 5 of that lease, it is clear and unambiguous that the tenants are to pay the bill for their water usage and trash pickup.

Accordingly, the Notice of Violation is not supported by the three Virginia Maintenance Code sections relied upon by Mr. Butler and the County.

SANCTIONS

The next issue in the case before the Board is that of sanctions and damages. Property owner has presented evidence and asked the Board by motion to find that Mr. Butler's actions and inactions, in combination with his action of instituting a criminal case in the Henrico Court against the property owner, was done maliciously and with a reckless regard of Mr. Butler's duties and obligations and without there being any violation of the three code sections that Mr. Butler listed as support for the criminal action.

The property owner further presented evidence that Mr. Butler's immediate boss or supervisory, Mr. Gregory Revels, joined in with Mr. Butler in this action and all its details. Mr. Revels thereby encouraged, approved, furthered and participated in the improper conduct of Mr. Butler.

Messrs. Butler and Revels did, individually and jointly, act to cause injury with the property owner and its agent who is the only person in that LLC entity. Messrs. Butler and Revels conspired jointly together to file and continue both this bogus Violation and this Board hearing, and at the same time the pending criminal case in the Henrico Court. Both did so knowing the injuries it would cause, yet each acted with disregard of the fact that the three code sections used were irrelevant to the County cutting off water for non-payment of the water bill. Both acted with disregard of the injuries this action would cause, and has caused, to others.

Accordingly based on this argument, the property owner and/or its agent personally, ask or make this motion for the Board to impose damages consisting of compensatory damages of \$1,800.00 against Henrico County as per Respondeat Superior¹; and punitive damages against John Butler, against Gregory Revels and against Henrico County, in an amount the Board deems appropriate.

CONCLUSION

WHEREFORE, the Board finds that:

THE NOTICE OF VIOLATION SHALL BE, AND HEREBY IS, DECLARED NULL AND VOID AND UNENFORCEABLE.

Compensatory and punitive damages are appropriate in this situation given the evidence presented, and the Board does hereby impose

Compensatory damages in the amount of \$1800 in favor of the property owner and against Henrico County; and

Punitive damages or sanctions as follows:

As to John Butler, \$2,000

As to Gregory Revels, \$2,000

¹ A recognized doctrine that makes an employer liable for the actions of an employee when the actions take place within the scope of employment.

As to Henrico County, \$50.000

ENTERED this 3rd day of August, 2018.

By:

Board Chairman

With all members of the Board in
agreement in this decision.

Prior Review Board
Decisions Provided
by Review Board Staff

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Long Fence Company, Inc.
Appeal No. 03-3

Decided: June 20, 2003

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

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

II. CASE HISTORY

In November 2002, the Prince William County USBC department conducted an inspection of a swimming pool fence at 6155 Treywood Lane. The fence was constructed by Long Fence Company, Inc. ("LFC"), a local fencing contractor. The inspector determined the fence did not comply with the USBC since it had openings greater than one and one quarter of an inch.

LFC replaced the fence with another type which was approved by the County, but also wrote to the County building official requesting reconsideration of whether the original type of fence met the code.

The building official responded by letter reiterating the reasons the original fence did not meet the code. The letter also informed LFC that it had a right to appeal.

LFC filed an appeal with the County of Prince William Board of Building Code Appeals ("County USBC board"), which heard and denied the appeal concurring with the building official that the original fence did not meet the requirements of the USBC. LFC then appealed the County USBC board's decision to the Review Board.

Based on past rulings of the Review Board, a preliminary hearing was scheduled to consider whether the appeal should be dismissed since no USBC violation existed. The parties were

given an opportunity to submit written arguments prior to the preliminary hearing and were given proper notice of the preliminary hearing. LFC attended the preliminary hearing and provided testimony. The County building official submitted a letter outlining the County's position and was not present at the preliminary hearing.

III. FINDINGS OF THE REVIEW BOARD

The issue before the Review Board is whether to dismiss the appeal since the type of fence which was disapproved by the County UBSC department was replaced with a type of fence that was approved.

The statutory and USBC provisions governing appeals are in pertinent part as follows:

Section 36-105 of the Code of Virginia

"Appeals from the local building department concerning application of the [USBC] ... shall first lie to the local board of [USBC] appeals."

Section 122.5 of the USBC

"The owner of the structure, the owner's agent or any other person involved in the design, construction or maintenance of the structure ... may appeal the code official's application of the USBC"

Previous rulings of the Review Board hold that the latest application of the USBC by an enforcing agency to a given set of circumstances is the only application of the USBC which may be

appealed and that no right of appeal exists where a USBC violation has been corrected.¹

LFC chose to replace the fence with a type which would be approved by the County instead of filing an appeal of the disapproval. Therefore no controversy is left to be adjudicated and no right of appeal exists. The fact that the County USBC official advised LFC that it could appeal does not establish a right to appeal where none exists under the USBC.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the appeal to be, and hereby is, dismissed without prejudice.

Michael A. Brewer Sr.

Chairman, State Technical Review Board

10-17-2003

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

¹ See Review Board Case Nos. 95-2, 98-21, 99-1 and 00-2.

you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

The notice of violation (NOV) listed three violations, two of which were resolved subsequent to the County appeals board hearing and decision; thus were removed from the appeal. The remaining issue involved the guardrail system installed on an outside deck. Vice Versa had the configuration of the deck guardrail system tested by an independent testing agency. The results of the testing were accepted by Fairfax County and the final inspection for the project was

Meadow Drive

William Wiehe, Jr., President of Vice Versa Design Build Corporation (Vice Versa), originally filed an appeal of enforcement action under the Virginia Uniform Statewide Building Code, Part I, Construction (VCC), by the Fairfax County Department of Land Development Services (Fairfax County) relative to the home of Scott and Donna Voelkel located at 6488 Lake

Case History

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).

Procedural Background

DECISION OF THE REVIEW BOARD

IN RE: Appeal of William Wiehe, Jr. – Vice Versa Corporation
Appeal No. 17-9
BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD
(REVIEW BOARD)
(For Determination of Whether to Dismiss as Moot)

VIRGINIA:

Fairfax County argued that changes to the deck were made to resolve the first two cited violations on the NOV and the third cited violation was resolved by the submittal of the engineer report; therefore, all violations had been resolved so there was no right to appeal.

Vice Versa argued that the guard system was installed properly and in accordance with an inspection report provided to Fairfax County at the time the deck was initially inspected and that the guard system is code compliant; furthermore, Vice Versa asserts that no changes, corrections, or modifications had been made to the guard system since its initial installation. Vice Versa further argued that they had not corrected any of the three violations listed in the NOV and that the deck construction was exactly as it was when the first rejected inspection was performed. Vice Versa argued that there were never any violations associated with the deck, that the deck has always been compliant, and that the rejected inspection and subsequent NOV were issued in error and should be rescinded.

I. Whether the Notice of Violation was properly before the Review Board.

Findings of the Review Board

Fairfax County was not willing to rescind the notice of violation. Appearing at the State Building Code Technical Review Board (Review Board) hearing for Fairfax County were Hayden Coddling, legal counsel, and Guy Tomberlin, Chief of the Inspections Branch of Fairfax County. Appearing at the Review Board hearing for Vice Versa were David McKennett, legal counsel, and William Wiehe, President of Vice Versa. Vice Versa believes further action by Fairfax County is necessary to resolve the issue to its satisfaction. Vice Versa sought nullification of the NOV and the vacating of the adverse decision by the Fairfax County Board of Building Code Appeals (County appeals board).

The issue before the Review Board is whether to dismiss the appeal since Vice Versa resolved the three cited violations. Previous rulings of the Review Board hold that the latest application of the VCC by an enforcing agency to a given set of circumstances is the only application of the VCC which may be appealed and no right of appeal exists where a NOV has been resolved.¹ Vice Versa chose to resolve the cited violations and indeed resolved them. Therefore, no controversy is left for this Review Board to adjudicate and no right of appeal exists.

II. Whether the letter of determination issued by the Building Official, which included some specific conditions for the approval of the final inspection, was properly before the Board.

Vice Versa argued that the letter of determination issued by the Building Official contained conditions for the final inspection approval making the approval subject to review at any time; thus, potentially causing harm to his client in the future. Vice Versa argued that the conditions set forth in the final approval were extra legal and outside the scope of the VCC.

Fairfax County argued that the perceived letter of determination issued by the Building Official was nothing more than an electronic mail (email), sent at the request of Vice Versa, explaining the Building Official's rationale for accepting the engineer's report for the guard system and subsequent approval of the final inspection. Fairfax County further argued that no conditions of the final exist by providing screen shots of the Fairfax County permitting and inspections software system (Fairfax County FIDO system) for this project.

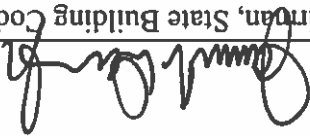
Fairfax County offered to write a new final approval letter with language clarifying that there were no conditions on the approval. Counsel for Vice Versa presented this as an option to Wiehe who declined the offer, indicating Vice Versa preferred to continue with the appeal.

¹ See Review Board Case No. 03-3. See also Review Board Case Nos. 95-2, 98-8, 98-21, 99-1, 00-2, and 01-11.

The Review Board finds that the letter of determination issued by the Building Official is properly before the Board. The Review Board further finds that the letter of determination issued by the Building Official was an email of explanation rather than an attempt to condition the approval of the guard system and that the information provided via screen in the Fairfax County FIDO system constituted the final approval and no conditions of the final are listed.

Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders this appeal to be, and hereby is, dismissed.


Chairman, State Building Code Technical Review Board

Date entered: June 15, 2018

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

IN RE: Appeal of Battlefield Rental Homes, Inc.
Appeal No. 98-8

Decided: October 16, 1998

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 the Virginia Uniform Statewide Building Code (USBC) and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia and § 103.1 of the USBC. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia and § 121.1 of the USBC.

This appeal to the Review Board is of a decision of the County of Hanover USBC enforcement department (code official) who issued notices of violation under §§ 116.0 and 118.0 of the

USBC to Battlefield Rental Homes, Inc. (Battlefield) for permitting occupancy of two houses constructed by Battlefield and located at 8364 and 8378 Emmanuel Trail without a USBC certificate of occupancy.

Battlefield appealed the notices to the County of Hanover Board of Building Code Appeals (local appeals board). The local appeals board ruled to uphold the issuance of the notices. Battlefield then appealed to the Review Board.

Subsequent to the hearing of the appeal by the local appeals board, the code official issued a certificate of occupancy for the house at 8364 Emmanuel Trail and revoked the USBC building permit for the house at 8378 Emmanuel Trail.

Review Board staff conducted an informal fact-finding conference on September 25, 1998 which was attended by representatives of Battlefield, including their counsel, and the code official. Battlefield stipulated at the conference that the appeal concerning the house at 8364 Emmanuel Trail was withdrawn since the certificate of occupancy had been issued. Review Board staff informed the parties that a preliminary hearing would be scheduled before the Review Board for a determination of whether the appeal of the USBC notice of violation concerning the house at 8378 Emmanuel Trail was moot due to the revocation of the USBC building permit for that house.

The Review Board conducted the preliminary hearing on October 16, 1998. Representatives of Battlefield and the code official were present. Battlefield requested a postponement of the preliminary hearing stating the Review Board's notice of the hearing was received with insufficient time to arrange representation by legal counsel. The Review Board ruled to proceed with the preliminary hearing after being informed by the code official and Review Board staff that Battlefield was informed of the hearing date at the informal fact-finding conference.

STATEMENT OF PERTINENT FACTS

The code official states the construction of the house at 8378 Emmanuel Trail complies with the USBC's technical standards. However, during the course of construction, the code official was informed by County zoning officials that there was a problem with approval of the house and property under the County's Zoning Ordinance.

At the time the code official became aware that the house was being occupied the zoning problem had not been resolved. The code official determined the USBC certificate of occupancy could not be issued until the zoning problem was resolved. Since the house was occupied, the code official issued the USBC notice of violation.

Subsequent to the USBC notice of violation being issued, the code official determined to revoke Battlefield's USBC permit. The code official testifies that he believes the revocation of the permit to be the appropriate application of the USBC when zoning approval has not been obtained. The code official has not stated in writing to Battlefield that the USBC notice of violation for occupancy without a certificate of occupancy has been vacated.

FINDINGS OF THE REVIEW BOARD

Section 118.1 of the USBC, relating to certificates of occupancy, states in pertinent part:

"A certificate of occupancy, indicating completion of the work for which a permit was issued, shall be obtained prior to occupancy of a structure"

Due to more recent action of the code official to revoke the building permit, unless successfully challenged through appeal¹, no permit now exists for constructing the house. Under § 118.1, no certificate of occupancy is needed or required in the absence of a permit. Therefore, there is no violation present of § 118.1. Since the code official used § 118.1 as the basis for the notice of violation, the notice is now without basis and invalid.

¹ Testimony of the code official indicates an appeal of the revocation has already been filed by Battlefield.

The Review Board notes its decision to invalidate the notice of violation for occupancy of the house without a certificate of occupancy is not to be construed as a decision that the house at 8378 Emmanuel Trail is in compliance with the USBC. The Review Board recognizes that the revocation of the existing USBC permit by the code official withdraws all approvals issued under the permit and that any construction must comply with the regulatory process set out in the USBC prior to being determined to be in compliance with the USBC.

FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the USBC notice of violation issued to Battlefield to be, and hereby is, moot due to the revocation of the building permit.

The appeal is dismissed without prejudice.

Michael A. Connor, Sr.
Vice-Chairman, State Technical Review Board

11-20-98
Date Entered

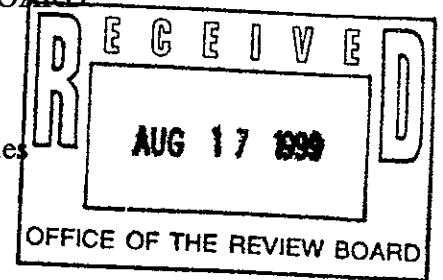
As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you

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 Norman R. Crumpton, Secretary of the State Building Code Technical Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Parker Lancaster Corporation and John E. Rhodes
Appeal No. 98-16



Appellant/Appellee Parker Lancaster Corporation (Parker Lancaster) and
Appellant/Appellee John R. Rhodes (Rhodes) have made the following representations:

1. Beginning in June, 1995, Parker Lancaster, a builder/vendor, constructed a single family home at 12301 Chiasso Way in Chesterfield County. The home was sold to the Rhodes on August 21, 1995. The Rhodes closed on the home and moved in on October 25, 1995.
2. After occupying the house, Rhodes notified Parker Lancaster and the Chesterfield County Building Inspection Department (the "building official") of certain alleged defects in construction. After investigation, the building official found some of the defects constituted code violations, and others did not. The building official also found that some of the code violations that had been cited had been corrected.
3. In August, 1998, Rhodes appealed a number of the building officials decisions to the Chesterfield County Board of Building Code Appeals (the "County Appeals Board").
4. The County Appeals Board heard Rhodes' appeal on September 23, 1998, and found six USBC violations. The County Appeals Board directed the building official to re-issue notices of violation for two of the violations, and to document

the remaining ones. The County Appeals Board also considered whether there was a USBS violation for not building the house in accordance with the approved plans and specifications, but did not rule that to be a violation.

5. By Application dated October 16, 1998, Parker Lancaster filed an appeal to the State Review Board. Rhodes filed an appeal to the Review Board by application dated October 26, 1998.
6. Rhodes filed a subsequent appeal to the County Appeals Board concerning the building official's failure to document a USBC for failure to build in accordance with the approved plans. The County Appeals Board heard Rhodes' appeal on December 2, 1998, and ruled for the building official to document that as a USBC violation. The building official did so by letter dated December 11, 1998.
7. The matters on appeal are as follows:
 - A. Whether the drain tile was installed in compliance with USBC Section 305.1.
 - B. Whether the roof rafter grading complies with USBC Section 703.1.
 - C. Whether a crack in the foundation violates Section R-503.1 of the CABO One and Two Family Dwelling Code (the "CABO Code") requiring exterior walls to provide a barrier to weather and insects.
 - D. Whether electrical cables in the crawl space were not secured in accordance with Section 300-11 of the National Electric Code.
 - E. Whether exposed vegetation in the crawl space was in violation of Section R311.1 of the CABO Code.

- F. Whether the first floor bearing walls were not built in compliance with Table R-402.3d of the CABO Code for walls supporting two floors, a roof, and ceiling, i.e., the first floor wall stud spacing/sizing is incorrect.
- G. Whether a USBC violation exists because the house was not built in accordance with the approved plans.
8. After review of the matters on appeal, the parties stipulate and agree as follows:
- A. That the violations for which the County Appeals Board directed the building official to re-issue notices of violation have been corrected and are now in compliance with the USBC.
- B. That the County Appeals Board lacked jurisdiction to direct documentation of the remaining code violations, because the Board acted in the absence of prior decisions of the building official on those items. On the merits of the documented violations, the parties agree that the items have either been corrected or do not constitute violations of the USBC.
- C. That the house not being built in accordance with the approved plans is not a violation of the USBC.

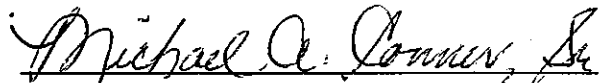
Based on the above representations, the State Building Code Technical Review Board hereby finds that the violations for which notices of violation were re-issued at the direction of the County Appeals Board have been corrected or abated.

The State Building Code Technical Review Board further finds that the County Review Board acted without jurisdiction in directing documentation of the remaining code violations, and

accordingly the Board's decisions with regard to those items are vacated. Since there is no other evidence that these items constitute violations, the Review Board further finds that no USBC violation exists relative to these items.

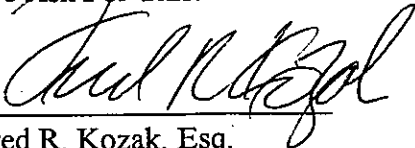
The State Building Code Technical Review Board further finds that no USBC violation exists relative to the house not being built in accordance with the approved plans.

Because these findings resolve all issues with regard to the appeals filed by Parker Lancaster and John Rhodes, the Board hereby dismisses this appeal as moot.

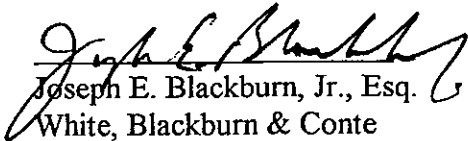


Chairman, State Building Code Technical Review Board

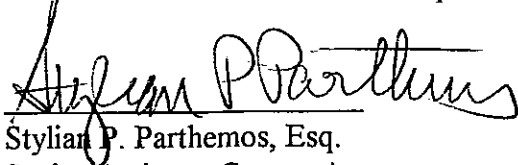
We Ask For This:



Fred R. Kozak, Esq.
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Stylian P. Parthemos, Esq.
Senior Assistant County Attorney
9901 Lori Road, Suite 503
Chesterfield, VA 23832
Counsel for Chesterfield County

Attest: This final order was entered on August 20, 1999.

⁴

Secretary, State Technical Review Board

VIRGINIA:

COPY

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of James Lapinski
Appeal No. 00-2

Decided: May 19, 2000

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (the "Review Board") is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code (the "USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia and § 103.1 of the USBC. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia and § 121.1 of the USBC. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia.

II. CASE HISTORY

In October 1999, in response to a complaint by tenants, City of Virginia Beach USBC inspectors (the "code official") inspected a rental house owned by Mr. Lapinski at 2445 Sandpiper Drive. An inspection report was written and a USBC notice of violation issued. The violations noted were disrepair of several windows, some loose sheathing, a loose toilet, a water leak at a chimney vent, some exposed electrical wires and peeling paint on and difficult operation of a door.

After a follow-up inspection by the code official, a USBC condemnation order was issued due to the water leak at the furnace chimney vent. A condemnation order is an order that prohibits occupancy of a building.

Lapinski filed an appeal to the City of Virginia Beach Board of Building Code Appeals (the "City USBC appeals board") by brief faxed to the code official on November 23, 1999. The code official responded by letter on the same day stating a report had been received from an oil company concerning the furnace and that the condemnation order was rescinded. Lapinski faxed a response to the code official indicating he still wished to appeal.

The code official re-inspected Lapinski's house on December 6, 1999 and informed Lapinski by letter dated December 7, 1999 that the USBC violations had all been corrected.

At Lapinski's insistence, the City USBC appeals board heard Lapinski's appeal on December 20, 1999 and ruled to dismiss the appeal as moot since the USBC violations had been corrected and the condemnation order rescinded.

Lapinski then further appealed to the Review Board.

III. PROCEEDINGS

Review Board staff conducted an informal fact-finding conference after receiving preliminary documents from the parties. The conference was attended by Lapinski, the code official and the City's legal counsel. The code official raised the issue of whether Lapinski's appeal was moot as decided by the City USBC appeals board. Lapinski requested the Review Board to rule on the merits of the USBC decisions of the code official, from a procedural and technical standpoint, asking for an invalidation and reversal of the issuance of the USBC notice of violation and condemnation order.

The parties were given a time period to submit additional documents for the record and to review the staff document resulting from the conference. Lapinski submitted a seven page brief along with other documents, supplementing the facts and issues set out in the staff document. The code official agreed with the staff document and indicated they would address any issues raised by Lapinski in verbal arguments at the hearing.

The hearing before the Review Board was scheduled for May 19, 2000. A Notice of Hearing was sent to the parties by certified/return receipt mail on May 3, 2000 indicating the hearing date and a hearing time of 10:00 a.m. A copy of the record was sent to the Review Board members and to the parties by regular mail on May 4, 2000.

The Review Board met on May 19, 2000 and opened a hearing on Lapinski's appeal at approximately 10:05 a.m. after dispensing with the approval of the minutes of a prior meeting and the approval of a final order in a prior case. The code official and the City's legal counsel were present. Lapinski was not present.

After brief arguments from the City's legal counsel, the hearing was closed and the Review Board entered deliberations. The Review Board then ruled to dismiss the appeal.

At approximately 10:15 a.m. Lapinski entered the meeting. The code official and the City's legal counsel were no longer present. Lapinski was informed the appeal had been heard and dismissed. At that time Lapinski proceeded to present arguments concerning his case to the Review Board. The Chairman of the Review Board re-opened the hearing to permit Lapinski to note his objection to the Review Board's decision for the record and to enter into the record pages four, five and six of his previously submitted seven page brief. Those pages had been omitted from the copy of the record sent to the Review Board and

outlined Lapinski's arguments concerning the technical aspects of the cited violations. The omitted pages did not address the issue of whether Lapinski's appeal was moot.

Lapinski then left the meeting and returned shortly submitting a handwritten notice of appeal of the Review Board's decision to dismiss the appeal.

IV. FINDINGS OF THE REVIEW BOARD

The controlling provision of the USBC concerning the validity of appeals is § 121.1 which states in pertinent part, "Appeals from the local building department concerning application of this code covering the manner of construction or materials to be used in the erection, alteration or repair of a structure shall first lie to the local board of building code appeals."

The Review Board has consistently ruled that where differing or multiple applications of the code concerning the same subject matter have been made by a code official, the latest or most current application of the USBC is considered to be the one in force and effect and is therefore the only decision subject to appeal. (See Review Board Appeal Nos. 98-8 and 99-1, *Battlefield Homes v. Hanover County*, where an appeal of a code official's refusal to issue a certificate of occupancy was ruled

moot due to the code official's subsequent decision to revoke the building permit for the same project.)¹

Likewise, in this case, the condemnation order and notice of violation issued by the code official and appealed by Lapinski are no longer in effect due to the subsequent decision of the code official to rescind the condemnation order and to acknowledge the correction of the cited violations. Accordingly, there is no appeal right for decisions no longer in effect.

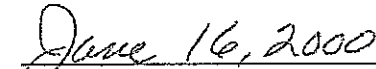
V. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders this appeal to be, and hereby is, dismissed as moot.

The appeal is denied.



Chairman, State Technical Review Board



Date Entered

¹The Review Board acknowledges in one case (Appeal No. 99-10, B & H Electric v. Prince William County) an appeal of the technical merits of a corrected violation was heard. However, that appeal was heard by mutual consent of the appealing party and the code official and therefore does not contradict established precedent.

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

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Wesley Stewart
Appeal No. 00-14

Decided: November 16, 2001

DECISION OF THE REVIEW BOARD

I. CASE HISTORY

In enforcing the Virginia Uniform Statewide Building Code ("USBC"), the City of Suffolk USBC official ("code official") issued a notice of violation directing Wesley Stewart ("Stewart"), owner of property at 213 Turlington Road, to remove all obstructions from the rear door of his house and to paint and repair a detached garage.

Stewart filed an appeal to the City of Suffolk Board of Building Code Appeals ("City USBC board") requesting the board to nullify the notice, refund appeal fees, provide compensation for lost time and expenses and additional demands and stated in the appeal submission that there were no obstructions blocking the rear door of the house and that the garage was an old farm structure and therefore exempt from the USBC.

The City USBC board met and determined Stewart's garage was not a farm structure.

Stewart then filed an appeal to the Review Board.

Review Board staff conducted an informal fact-finding conference attended by Stewart and the code official resulting in the stipulation of issues for resolution by the Review Board. A subsequent hearing was held before the Review Board attended by Stewart and the code official. At the hearing, in addition to presenting arguments on the merits of his appeal, Stewart informed the Review Board members that he had not been properly notified of the City USBC board's hearing and was not in attendance at the meeting. Stewart requested the Review Board to issue an order directing the City USBC board to rehear the appeal with all parties present.

II. FINDINGS OF THE REVIEW BOARD

The Review Board finds the issue of whether the USBC notice of violation should have been issued for Stewart's garage/shed to be a proper issue for appeal. Since there is disagreement over whether Stewart was present at the hearing before the City USBC board and minutes of the City USBC board meeting are not provided as part of the record of the appeal to the Review Board, the Review Board finds Stewart's request for this issue

to be remanded to the City USBC board for a proper hearing with all parties present to be appropriate.

The Review Board finds the issue of whether to overturn the issuance of the USBC notice of violation ordering Stewart to remove obstructions from the rear door of the house to be moot as the code official states there is no current USBC violation present. Stewart's appeal of this issue is therefore dismissed.

The Review Board finds the issues of whether to impose sanctions, punitive actions, disciplinary action, award the reimbursement of costs and any other issues raised by Stewart other than whether the issuance of the USBC notice of violation for the garage/shed is a correct application of the USBC are outside the purview of the USBC appeals process and are therefore dismissed.

III. REMAND/DISMISSAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the appeal of whether the USBC notice of violation should have been issued for Stewart's garage/shed to be, and hereby is, remanded to the City USBC board for a proper hearing with all parties present. In addition, and for the reasons set out herein, the Review Board orders all issues in Stewart's appeal other than the proceeding remanded issue, to be, and hereby are, dismissed.

The appeal is remanded in part with the remainder dismissed.

Michael A. Bonner, Sr
Chairman, State Technical Review Board

01-25-2002
Date Entered

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

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of SNSA, Inc.
Appeal Nos. 11-9 and 11-10

Hearing Date: August 19, 2011

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

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

II. CASE HISTORY

SNSA, Inc. (SNSA), the lessee of a building located at 6220 Richmond Highway, in Fairfax County, and entity responsible for the operation of a restaurant and billiard parlor known as Fast Eddie's, appeals actions by the Fairfax County Fire and Rescue Department and the Fairfax County Department of Code Compliance.

Over the last several years, SNSA was involved in disputes with the Fairfax County Department of Planning and Zoning concerning its operation of Fast Eddie's and its use as a dance hall. SNSA appealed certain determinations to the Fairfax County Board of Zoning Appeals and undertook action in the courts in attempts to secure a non-residential use permit from the County.

During this time, and allegedly related to the zoning issues, in February of 2011, a late-night inspection was conducted by the Fairfax County Office of the Fire Marshal and a notice of violation issued under the Virginia Statewide Fire Prevention Code (SFPC) for patrons, staff and trash bags blocking the landings and stairs.

In April of 2011, the Office of the Fire Marshal issued a notice of revocation of the fire prevention code permit due to Fast Eddie's not having a current non-residential use permit from the County Department of Planning and Zoning.

Also in April of 2011, the Fairfax County Department of Code Compliance issued a notice of violation/notice of unsafe or unfit structure under Part III of the USBC, known as the Virginia Maintenance Code or VMC, to SNSA, requiring the building to be vacated due to not having the appropriate permits to use the building.

SNSA appealed both the SFPC notice of revocation and the VMC notice of violation to the Fairfax County Board of Building Code Appeals (County appeals board), which heard the appeals in June of 2011 and ruled to uphold both notices.

SNSA further appealed the decisions of the County appeals board to the Review Board.

In the Review Board staff reviewing the documents submitted in the appeal to the Review Board, it became apparent that the County Department of Planning and Zoning had issued a new non-residential use permit and the SFPC and VMC notices had effectively been rescinded prior to the hearing before the County appeals board, which, and based on prior decisions of the Review Board, raised the issue of whether appeals were moot.

SNSA's submittal to the Review Board indicated that it was aware of the subsequent actions by the County, but argued that the appeals were not moot.

Review Board staff then scheduled a preliminary hearing before the Review Board to address whether the appeals were

moot. The preliminary hearing was attended by legal counsel for SNSA and legal counsel and representatives of Fairfax County.

III. FINDINGS OF THE REVIEW BOARD

SNSA argues that the appeals are not moot since the County has not rescinded the SFPC and VMC notices and their continued validity exposes SNSA to liability. In addition, SNSA argues that an appeal of whether the County's actions were illegal, without resolution, would subject SNSA to future punitive actions by state and local officials based on an un-rebutted determination that SNSA maintained the business in unsafe conditions warranting orders to close the business.

The Review Board finds that the SFPC and VMC notices have been sufficiently rescinded by the County given that the Office of the Fire Marshal has issued a new SFPC use permit for the building and representatives of the County Department of Code Compliance testified, under oath, in the preliminary hearing that there were no present violations of the VMC at Fast Eddie's.

The Review Board further finds that its statutory charge, under § 36-114 of the Code of Virginia, is limited only to hearing appeals from decisions arising under application of Virginia's building and fire regulations, specifically, in this case, the SFPC and USBC, and consistent with past decisions of

the Review Board, where such applications of the SFPC or USBC under appeal have been rescinded, corrected or are superseded by new decisions which effectively render the original applications of the codes void or invalid, such appeals are moot and may not be heard by the Review Board.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders SNSA's appeals of the SFPC and VMC notices to be, and hereby are, dismissed as moot.

/s/*

Chairman, State Technical Review Board

Nov. 18, 2011

Date Entered

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

is served on you by mail, three (3) days are added to that period.

Virginia:

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

IN RE: Appeal of Cynthia M. Owens
Appeal No. 16-6

Hearing Date: January 17, 2017

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

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

II. CASE HISTORY

In December of 2015, Cynthia M. Owens (Owens) and her husband

hired Bill Peters, Inc. (Peters), a licensed Class A contractor, to perform structural alterations to the roof of her condominium located at 6802-B Oceanfront Avenue, in Virginia Beach. The work generally involved the demolition of a small, flat roof section and the installation of a new pitched roof.

Later in December, Peters applied for and obtained a building permit for the aforementioned work from the City of Virginia Beach Department of Planning and Community Development (City code office), the agency responsible for the enforcement of the Virginia Uniform Statewide Building Code (the Virginia Construction Code or VCC). Peters submitted an engineering plan with the permit application to describe the proposed work. Sinclair Pratt Cameron, P.C (Sinclair), a structural engineering firm hired directly by Owens, generated the plan.

In early January of 2016, Peters demolished the existing flat roof; fastened the new rafters to the ledger boards; framed a soffit; and installed plywood and fire retardant OSB roof sheathing.

On January 6, 2016, Sinclair performed a third party inspection of Peters' work on the home and approved it.

Subsequently, Sinclair submitted its approval to the City code office which accepted it as being in accordance with the city's third party inspection policy.

In June of 2016, six months after the original third party inspection, Cynthia M. Owens (Owens) contacted the City code office requesting it inspect Peters' work, alleging potential VCC violations. Owens asserted that Sinclair's approval of the work, as a third party inspector, did not comply with VCC requirements.

That same month, the City code office informed Owens by letter that it would not be citing Peters for any alleged VCC violations, based on its review of its own records and the information she submitted.

Subsequently, Owens filed an appeal to the City of Virginia Beach's Board of Building Code Appeals (local appeals board) which heard her appeal in August of 2016 and upheld the decision of the City code office not to "inspect, to revoke a passing inspection and /or cite the responsible contractor for potential USBC violations [...]".

Owens then further appealed to the Review Board.

Prior to the hearing on the appeal, the City notified Owens, and Review Board staff, that it would accept two letters from Marcos Freeman, P.E. (Freeman), dated September 13, 2016 and October 29, 2016, as cause to reject the previous third party inspection by Sinclair. This acceptance was based on destructive testing performed by Freeman subsequent to Owens'

hearing before the local appeals board.

The hearing before the Review Board was attended by Owens, representatives of the City code office and their legal counsel.

FINDINGS OF THE REVIEW BOARD

The initial issue raised at the hearing before the Review Board concerned the City's third party inspection policy relating to Sinclair's approval of the work performed by Peters on Owen's home. During her testimony, Owens contended that the policy was flawed and that the City should be required to reevaluate its policy. The City testified that its policy was developed in accordance with VCC Section 113.7.1 which states:

"113.7.1 Third-party inspectors. Each building official charged with the enforcement of the USBC shall have a written policy establishing the minimum acceptable qualifications for third-party inspectors. The policy shall include the format and time frame required for submission of reports, any prequalification or preapproval requirements before conducting a third-party inspection and any other requirements and procedures established by the building official."

After testimony from both parties on this issue, the Review Board's legal counsel informed the parties that the Review Board does not have any statutory authority over local government policies.

The pertinent issue before the Review Board is whether the appeal is moot due to the decision by the City code office, in January of 2017, to issue a Notice of Violation to Peters on the connected work his company performed on Owen's home. During its testimony on the issue, the City affirmed that it was prepared to 1.) to perform an onsite inspection of the contractor's work, 2.) to revoke the passing inspection of the work, and 3.) to cite the contractor for violating the statewide building code, all actions requested by Owens in her appeal to the local appeals board. In addition, Owens acknowledged that the City code office had agreed to perform the preceding actions against Peters, but expressed concern that there was not enough specificity in what the City planned to cite.

The Review Board has consistently ruled that where differing or multiple applications of the code concerning the same subject matter have been made by a code official, the latest or most current application of the VCC is considered to be the one in force and effect and is therefore the only decision subject to appeal. (See Review Board Appeal Nos. 98-8 and 99-1, Battlefield Homes v. Hanover County, where an appeal of a code official's refusal to issue a certificate of occupancy was ruled moot due to the code official's subsequent decision to revoke the building permits for the same project.)¹

Likewise, in this case, the City code office's application of the code (i.e. its decision to not cite Peters) was superceded by its decision to issue a new Notice of Violation to Peters based on Freeman's third party inspection reports. Accordingly, there is no appeal right for decisions no longer in effect.


Therefore, after conducting a hearing attended by Owens and representatives of the City code office, and given the willingness of the City code office's to issue a Notice of Violation to Peters, the permit holder, the Review Board finds that the appeal is moot.

FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board orders this appeal to be, and hereby is, dismissed as moot.

The appeal is denied.

¹ The Review Board acknowledges in one case (Appeal No. 99-10, B & H Electric v. Prince William County) an appeal of the technical merits of a corrected violation was heard. However, that appeal was heard by mutual consent of the appealing party and the code official and therefore does not contradict established precedent.



Chairman, State Technical Review Board

Feb. 17, 2017

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 Alan McMahan, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Rappahannock County High School
Appeal No. 18-16

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VIRGINIA:

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

IN RE: James E. Swindler, Principal for Rappahannock County High School
Appeal No. 18-16

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. In September of 2018, a representative of the State Fire Marshal's Office (SFMO) conducted inspections at Rappahannock High School located at 12576 Lee Highway in Rappahannock County.

2. On September 4, 2018, the SFMO issued Notices of Violation to the school concerning the Virginia Statewide Fire Prevention Code (SFPC) Section 1030.2.1 (Security devices and egress locks) concerning the installation of security devices. The installation of the security devices did not require a modification to the building code or the issuance of a building permit.

3. Mr. Swindler filed an appeal to the Review Board on September 12, 2018. The appeal was based on SMFO citing two violations of SFPC Section 1030.2.1 related to the installation of security devices, to be used in an "active shooter" event, that were not in use at the time of the inspection.

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

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Suggested Issues for Resolution by the Review Board

1. Whether to overturn or uphold the decision of the State Fire Marshal that a violation of the SFPC Section 1030.2.1 (Security devices and egress locks) exists in the auditorium and throughout the school.

2. Whether to overturn or uphold the decision of the State Fire Marshal that a violation of the SFPC Section 1030.2.1 (Security devices and egress locks) exists in the library.

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Basic Documents

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Michael Reilly
Executive Director

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



Northern Regional Office
State Fire Marshals Office
471 James Madison Hwy. Ste. 101
Culpeper, VA 22701
Phone: (540) 317-7670
Fax: (540) 727-7041
Billy Hux, Chief Deputy
Fire Marshal Eastern Supervisor

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

Date of Inspection:

09/04/2018

Owner/Occupant: Rappahannock County Schools Building Name: Rappahannock County High School Address: 12576 Lee Highway 12576 Lee Highway Washington, 22747	File Number: N-1322-001 Occ/Use Code: SCH Annual Inspection
---	---

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
605.7	Appliances. Electrical appliances and fixtures shall be tested and listed in published reports of inspected electrical equipment by an approved agency and installed and maintained in accordance with all instructions included as part of such listing. Kitchen- drink coolers connected to powerstrips.	10/4/2018
1030.2.1	Security devices and egress locks. Security devices affecting the means of egress shall be subject to approval of the fire code official. Special locking arrangements including, but not limited to access-controlled egress doors, security grills, locks and latches, and delayed egress locks shall be installed and maintained as required by this chapter. Unapproved security devices located in the auditorium and throughout the school. Devices were removed the day of the inspection.	10/4/2018

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: Jimmy Swindler

Page 1 of 8

Inspected By: Greg Harp, Deputy State Fire Marshal

Date: 9/4/2018

Michael Reilly
Executive Director

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



Northern Regional Office
State Fire Marshals Office
471 James Madison Hwy. Ste. 101
Culpeper, VA 22701
Phone: (540) 317-7670
Fax: (540) 727-7041
Billy Hux, Chief Deputy
Fire Marshal Eastern Supervisor

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

Date of Inspection:

09/04/2018

Owner/Occupant: Rappahannock County Schools Building Name: Rappahannock County High School Address: 12576 Lee Highway 12576 Lee Highway Washington, 22747	File Number: N-1322-001 Occ/Use Code: SCH Annual Inspection
---	---

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. Stage- extension cord supplying power to the decorative lights above the curtains.	10/4/2018
605.4.2	Power supply. Relocatable power taps shall be directly connected to a permanently installed receptacle. Stage- powerstrip connected to an extension cord located stage left by sound equipment.	10/4/2018

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: Jimmy Swindler

Page 2 of 8

Inspected By: Greg Harp, Deputy State Fire Marshal

Date: 9/4/2018

Michael Reilly
Executive Director

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



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State Fire Marshal's Office
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Billy Hux, Chief Deputy
Fire Marshal Eastern Supervisor

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

Date of Inspection:

09/04/2018

Owner/Occupant: Rappahannock County Schools	File Number: N-1322-001
Building Name: Rappahannock County High School	Occ/Use Code: SCH
Address: 12576 Lee Highway 12576 Lee Highway Washington, 22747	Annual Inspection

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. Auditorium- cables to the sound system obstruct egress and present a trip hazard along the right side.	10/4/2018
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. Exit corridor near gym- Vending machine in exit near gym obstructs egress and does not allow for the full instant use of exit.	10/4/2018

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: Jimmy Swindler

Page 3 of 8

Inspected By: Greg Harp, Deputy State Fire Marshal

Date: 9/4/2018

Michael Reilly
Executive Director

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



Northern Regional Office
State Fire Marshals Office
471 James Madison Hwy. Ste. 101
Culpeper, VA 22701
Phone: (540) 317-7670
Fax: (540) 727-7041
Billy Hux, Chief Deputy
Fire Marshal Eastern Supervisor

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

Date of Inspection:

09/04/2018

Owner/Occupant: Rappahannock County Schools Building Name: Rappahannock County High School Address: 12576 Lee Highway 12576 Lee Highway Washington, 22747	File Number: N-1322-001 Occ/Use Code: SCH Annual Inspection
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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.

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. Gym- exit to the left of the wrestling room is obstructed by stored equipment. Note: corrected on site.	10/4/2018
605.7	Appliances. Electrical appliances and fixtures shall be tested and listed in published reports of inspected electrical equipment by an approved agency and installed and maintained in accordance with all instructions included as part of such listing. Gym Concessions- microwave connected to a powerstrip.	10/4/2018

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: Jimmy Swindler

Page 4 of 8

Inspected By: Greg Harp, Deputy State Fire Marshal

Date: 9/4/2018

Michael Reilly
Executive Director

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



Northern Regional Office
State Fire Marshals Office
471 James Madison Hwy. Ste. 101
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Billy Hux, Chief Deputy
Fire Marshal Eastern Supervisor

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

Date of Inspection:

09/04/2018

Owner/Occupant: Rappahannock County Schools Building Name: Rappahannock County High School Address: 12576 Lee Highway 12576 Lee Highway Washington, 22747	File Number: N-1322-001 Occ/Use Code: SCH Annual Inspection
---	---

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. Room 6- extension cord powering computer monitor at the teachers desk.	10/4/2018
1030.2.1	Security devices and egress locks. Security devices affecting the means of egress shall be subject to approval of the fire code official. Special locking arrangements including, but not limited to access-controlled egress doors, security grills, locks and latches, and delayed egress locks shall be installed and maintained as required by this chapter. Library- security devices in place for use. Instructed staff to remove immediately and not to use.	10/4/2018

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: Jimmy Swindler

Page 5 of 8

Inspected By: Greg Harp, Deputy State Fire Marshal

Date: 9/4/2018

Michael Reilly
Executive Director

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



Northern Regional Office
State Fire Marshals Office
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Billy Hux, Chief Deputy
Fire Marshal Eastern Supervisor

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

Date of Inspection:

09/04/2018

Owner/Occupant: Rappahannock County Schools	File Number: N-1322-001
Building Name: Rappahannock County High School	Occ/Use Code: SCH
Address: 12576 Lee Highway 12576 Lee Highway Washington, 22747	Annual Inspection

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.

605.7	Appliances. Electrical appliances and fixtures shall be tested and listed in published reports of inspected electrical equipment by an approved agency and installed and maintained in accordance with all instructions included as part of such listing. Room 12- appliances connected to a powerstrip located in the back left corner.	10/4/2018
703.2.3	Door operation. Swinging fire doors shall close from the full-open position and latch automatically. The door closer shall exert enough force to close and latch the door from any partially open position. 8th Grade Wing- Fire doors located at the front of the 8th Grade Wing do not completely close and latch.	10/4/2018

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: Jimmy Swindler

Page 6 of 8

Inspected By: Greg Harp, Deputy State Fire Marshal

Date: 9/4/2018

Michael Reilly
Executive Director

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



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

Date of Inspection:

09/04/2018

Owner/Occupant: Rappahannock County Schools Building Name: Rappahannock County High School Address: 12576 Lee Highway 12576 Lee Highway Washington, 22747	File Number: N-1322-001 Occ/Use Code: SCH Annual Inspection
---	---

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.

703.1	Maintenance. The required fire-resistance rating of fire-resistance-rated construction (including walls, firestops, shaft enclosures, partitions, smoke barriers, floors, fire-resistive coatings and sprayed fire-resistant materials applied to structural members and fire-resistant joint systems) shall be maintained. Such elements shall be visually inspected by the owner annually and properly repaired, restored or replaced when damaged, altered, breached or penetrated. Where concealed, such elements shall not be required to be visually inspected by the owner unless the concealed space is accessible by the removal or movement of a panel, access door, ceiling tile or similar movable entry to the space. Openings made therein for the passage of pipes, electrical conduit, wires, ducts, air transfer openings and holes made for any reason shall be protected with approved methods capable of resisting the passage of smoke and fire. Openings through fire-resistance-rated assemblies shall be protected by self- or automatic-closing doors of approved construction meeting the fire protection requirements of the assembly.	10/4/2018
	8th Grade Wing- ceiling tiles missing.	

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: Jimmy Swindler

Page 7 of 8

Inspected By: Greg Harp, Deputy State Fire Marshal

Date: 9/4/2018

Michael Reilly
Executive Director

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



Northern Regional Office
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471 James Madison Hwy. Ste. 101
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Billy Hux, Chief Deputy
Fire Marshal Eastern Supervisor

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

Date of Inspection:

09/04/2018

Owner/Occupant: Rappahannock County Schools	File Number: N-1322-001
Building Name: Rappahannock County High School	Occ/Use Code: SCH
Address: 12576 Lee Highway 12576 Lee Highway Washington, 22747	Annual Inspection

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.

907.8	Inspection, testing, and maintenance. The maintenance and testing schedules and procedures for fire alarm and fire detection systems shall be in accordance with 907.8.1 through 907.8.5 and NFPA 72.	10/4/2018
	The most recent fire alarm report indicates the relay for trouble output from the main panel is not functioning.	

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: Jimmy Swindler

Page 8 of 8

Inspected By: Greg Harp, Deputy State Fire Marshal

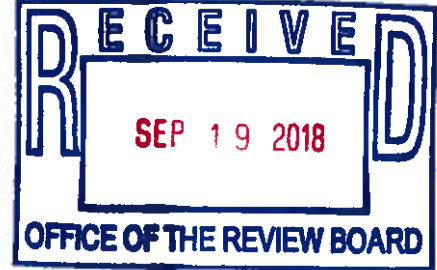
Date: 9/4/2018

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

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

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



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

Rappahannock County High School - James E. Swindler II, Principal
12576 Lee Highway
Washington, VA 22747 jswindler@rappahannockschools.us
540 227 0745

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

State Fire Marshall's Office / Northern Regional Office
471 James Madison Hwy, Ste 101
Culpeper, VA 22701

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 12th day of September, 2018, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

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

Signature of Applicant: [Handwritten Signature], Principal, RCHS

Name of Applicant: James E. Swindler II
(please print or type)



RAPPAHANNOCK COUNTY HIGH SCHOOL

12576 Lee Highway • Washington, VA 22747

540-227-0745 Phone • 540-987-9331 Fax

www.rappahannockschoools.us

State Fire Marshal's Office/Northern Regional Office

September 10, 2018

471 James Madison Hwy, Ste. 101

Culpeper, VA 22701

Dear Sir/Madam,

Please consider this letter to be the "statement of specific relief sought" portion of the attached application for administrative appeal.

Reference the Inspection Notice dated 9/4/18 for Rappahannock County High School, specifically pages 1 and 5 of the 8 page report, in regards to Code Section 1030.2.1 (highlighted on the attached copy of the inspection report).

We are appealing the finding which required the removal of unapproved security devices located throughout the school; devices which were NOT in use at any time. We are NOT appealing the USE of these devices as we are not/were not in fact using them. We ARE however appealing the finding that led to the order to remove said devices from our school.

If you have any questions about this appeal or need any additional information, please do not hesitate to reach out to me. I look forward to hearing from you positively.

Respectfully,

James E. Swindler II, M.Ed., Principal Rappahannock County High School

Documents Submitted
By Rappahannock County
High School

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Items of information relative to the
Appeal to the Review Board by Rappahannock County High School

- **Any permits or modification requests for the installation of the security devices and egress locks.**

No permits were needed for the installation of the two devices in question. One is an open market device (Barracuda) that requires no installation other than to mount the bracket on which the device rests when not in use. The other (chain safety lock) is a device fabricated by our own manufacturing tech class students for doors that could not utilize the Barracuda device. Neither device impacts or changes the normal operation of the door (unless put into use) and neither device meets the cost threshold that would require a county permit.

- **Provide the specific security devices and egress locks installed in the Rappahannock High School cited in the September 4, 2018 State Fire Marshal's Office Inspection Notice.**

One of the devices is the Barracuda Door Hinge Lock, available on the open market. The link below contains information about the product from the vendor (Global Industrial) from whom we purchased the devices.

<https://www.globalindustrial.com/p/building-materials/door-hardware/intruder-defense-systems/intruder-defense-system-commercial-doors-with-scissor-closers-dcs-1>

The other device is a length of chain with a hook at the end. The chain is attached to the wall next to the door with the hook linked over the doorknob or the push bar of the door. The hook is NOT locking, can be easily put in place or removed, but the complete setup will not allow anyone from the other side of the door to pull it open.

- **Manufacturer's specification sheet(s) for the security devices and egress locks.**

See website above for Barracuda. There are no specs for the chain safety lock as it was fabricated in house.

- **Manufacturer's installation instructions for the security devices and egress locks.**

See website above for Barracuda. There are no installation instructions for the chain safety lock other than to mount one end to the wall next to the door and then hook the chain over the doorknob or pushbar when seeking to prevent entry to the room.

- **Photographs of the security devices and egress locks.**

Provided separately

- **Any other information about the security devices and egress locks that are pertinent to the appeal.**

Both devices, the Barracuda and the chain safety lock, are ONLY used in the events of either a lockdown drill or an actual emergency that requires the school to go into lockdown. Neither device would be utilized at any other time, with the Barracuda resting near its applicable door on a wall bracket, and the chain safety lock hanging from its mounted position on the wall near the door. Both devices are easily put into use and just as easily removed from use and both devices promise great effectiveness when the goal is to prevent entry into the classroom, which IS the goal in the event of an intruder or shooting in the school.

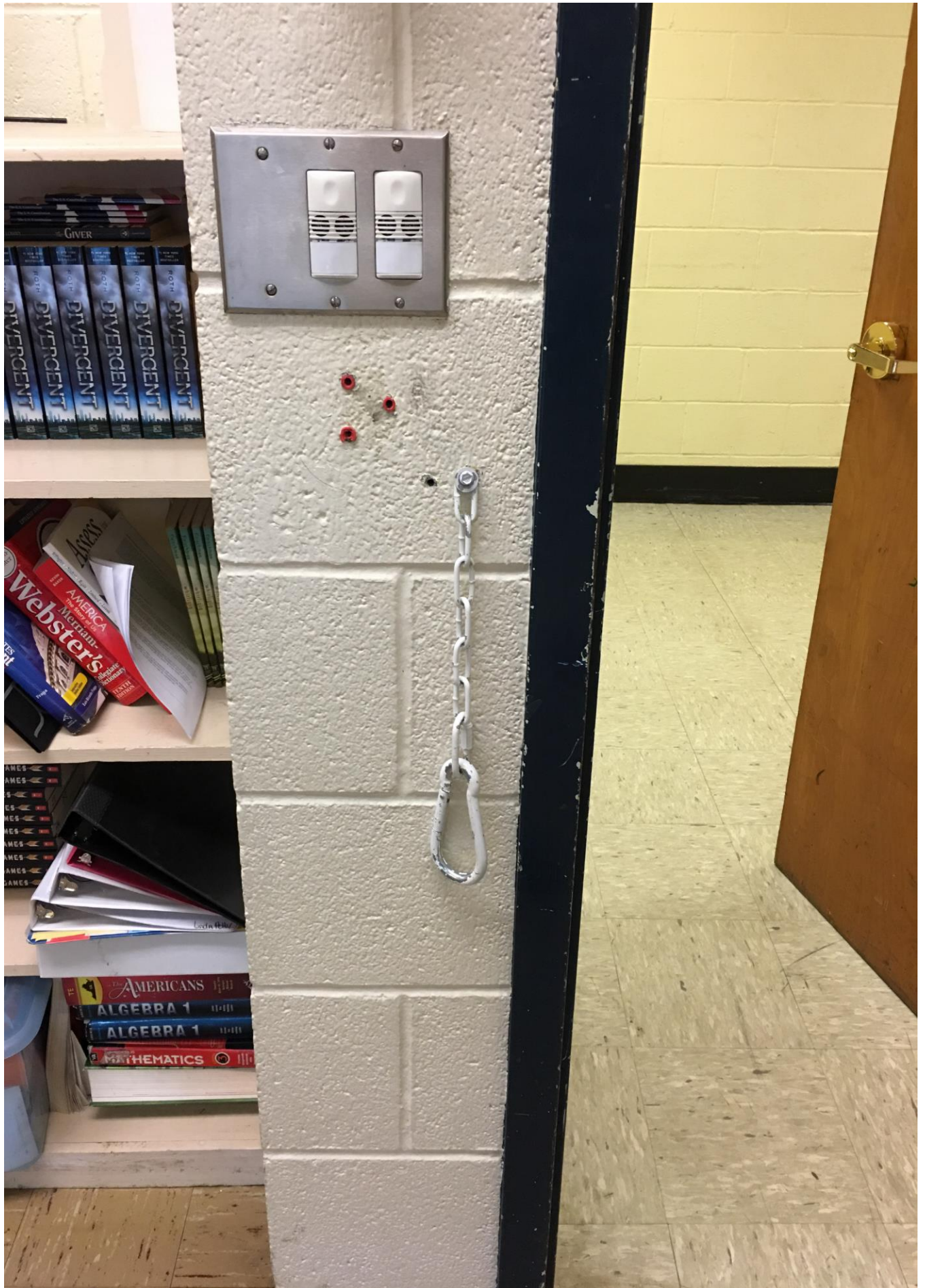
- **Photographic documentation from the day of the inspection related to the security devices and egress locks.**

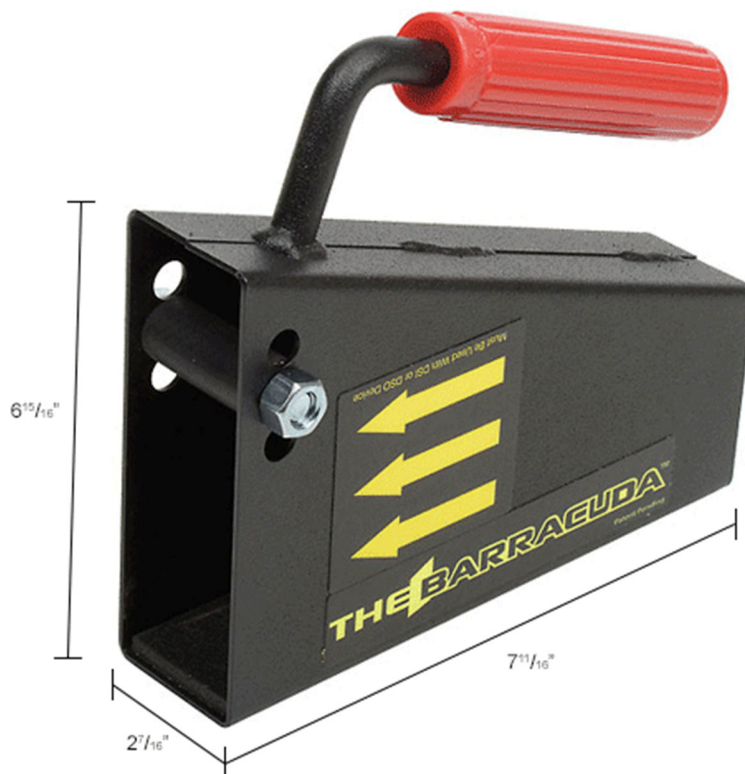
None related.

- **Any other photographs or documentation relative to the appeal.**

None relative











Wall-Mounting Rack and Hardware
Allows Convenient Installation and Storage



Supports Scissor Action Door Closers

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Documents Submitted By SFMO

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COMMONWEALTH of VIRGINIA

Michael T. Reilly
EXECUTIVE DIRECTOR

Brook M. Pittinger
DEPUTY EXECUTIVE DIRECTOR

Virginia Department of Fire Programs

Brian M. McGraw, P.E., FSFPE
STATE FIRE MARSHAL

January 4, 2019

W. Travis Luter, Sr., C.B.C.O.
Assistant Secretary to the State Building Code TRB
Department of Housing & Community Development
Division of Building & Fire Regulation
600 East Main Street, Suite 300
Richmond, Virginia 23219

Dear Mr. Luter,

Please accept this letter as the State Fire Marshal's Office (SFMO) response to the request for additional documents related to the Application for Administrative Appeal submitted by Mr. James E. Swindler, II, on behalf of Rappahanock County High School.

We offer the following information for consideration by Staff and the Members of the Technical Review Board:

- Section 1030.2.1 of the 2012 SFPC states: "Security devices affecting the means of egress shall be subject to approval of the fire code official. Special locking arrangements including, but not limited to access-controlled egress doors, security grills, locks and latches, and delayed egress locks shall be installed and maintained as required by this chapter."
- The "Barracude Door Hinge Lock" and homemade "hook and chain" devices provided for use in Rappahanock County High School constitute "security devices and egress locks" and, therefore, are subject to approval by the Fire Code Official in accordance with Section 1030.2.1 of the Statewide Fire Prevention Code.

State Fire Marshal's Office
1005 Technology Park Drive, Glen Allen, VA 23059-4500
Phone: (804) 249-1995 or Fax: (804) 371-3418
www.vafire.com

- The 2012 IFC Commentary states the following regarding Section 1030.2.1:
“In our society, security is an ever-growing concern and often the solutions to enhancing the security of buildings conflict with the life-safety concerns of building and fire codes. This section provides the fire code official with an important measure of control over the installation or modification of security devices that could have an adverse effect upon the egress system of a building.
- The 2018 International Fire Code contains a new Section 1031.2.2 that states: “In Group E occupancies, Group B educational occupancies and Group I-4 occupancies, egress doors from classrooms, offices and other occupied rooms shall be permitted to be provided with locking arrangements designed to keep intruders from entering the room where all of the following conditions are met:
 1. The door shall be capable of being unlocked from outside the room with a key or other approved means.
 2. The door shall be openable from within the room in accordance with Section 1010.1.9.
 3. Modifications shall not be made to existing listed panic hardware, fire door hardware or door closers.
 4. Modifications to fire door assemblies shall be in accordance with NFPA 80.
- Section 1010.1.9 of the 2018 International Fire Code contains the same requirements as Section 1008.1.9 of the 2012 Virginia Construction Code and the 2012 SFPC, including:
 - Egress doors shall be readily openable from the egress side without the use of a key or special knowledge or effort.
 - Door handles, pulls, latches, locks and other operating devices shall be installed 34 inches minimum and 48 inches maximum above the finished floor.
 - The unlatching of any door or leaf shall not require more than one operation.
 - Door handles, pulls, latches, locks and other operating devices on doors required to be accessible shall not require tight grasping, tight pinching or twisting of the wrist to operate.
- The introduction of the new Section 103.2.2 in the 2018 IFC demonstrates clear intent by the ICC that supplemental locking devices intended for use during lock downs in schools comply with the operating principles described above.
- The Barracuda device is deployed on the door closer arm, at the top of the door. This does not comply with the requirement that “door handles, pulls, latched, locks and other operating devices shall be installed 34 inches

minimum and 48 inches maximum above the finished floor". This device is also in conflict with the Federal Americans With Disabilities Act.

- The homemade "hook and chain" device requires tight grasping or pinching in order to operate.
- Both devices result in more than one action or operation being required to operate the door.
- Neither device can be operated / overridden from outside the room.
- The devices in question were provided / installed without the approval of the local Building Official or the Fire Official.
- The applicant states that "no permits were needed for the installation of the two devices in question" and "Neither devices impacts or changes the normal operation of the door (unless put into use) and neither devices meets the cost threshold that would require a county permit".
 - As previously noted, Section 1030.2.1 states that security devices are subject to the approval of the Fire Official. It does not tie this approval to a requirement for a permit.
 - It is a true statement that the devices do not impact or change the operation of the door unless they are put into use. However, their presence makes them readily available to be put into use and their use creates a significant safety hazard and a non-compliant condition.
 - Following the Board's line of reasoning in previous cases, Section 108.1 requires a permit for "installations or alterations involving ... (iv) the alteration of any required means of egress system", with no dollar value threshold.
- The attached letter to school officials outlines the history of large life loss school fires in the United States. We have not experienced fires of this nature in over 50 years **because of** the fire and life safety regulations that were developed in response to these incidents.
- While the provided devices may serve a specific need in the event of an active violence incident, they are readily available for use for unintended purposes that could result in harm to students or staff such as a student deploying the device to trap a teacher or another student in the room in order to do them harm. There are no physical controls to prevent such use.
- Several manufacturers offer upgraded door hardware specifically designed for classroom doors that provided added security while still complying with the Fire Code. There are also retrofit devices to provide a locking feature to existing door hardware that comply with the requirements of the Fire Code.

The safety of students and staff in our schools is of paramount importance to the State Fire Marshal's Office. However, we should not be increasing physical security at the expense of fire safety.

Sincerely,



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