

STATE BUILDING CODE TECHNICAL REVIEW BOARD

MEETING  
August 19, 2011

GLEN ALLEN, VIRGINIA

Members Present

Mr. J. Robert Allen, Chairman  
Mr. R. Schaefer Oglesby, Vice-Chairman  
Mr. W. Keith Brower, Jr.  
Mr. J. Daniel Crigler  
Mr. James R. Dawson  
Mr. John H. Epperson  
Mr. Joseph A. Kessler, III  
Mr. John A. Knepper, Jr.  
Mr. James N. Lowe  
Mr. Eric Mays  
Ms. Joanne D. Monday

Members Absent

Mr. Matthew Arnold  
Ms. Patricia S. O'Bannon

Call to Order

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

Roll Call

The attendance was established by Mr. Vernon W. Hodge, Secretary, and constituted a quorum. Mr. Patrick Griffin, Senior Assistant Attorney General in the Office of the Attorney General, was present and serving as the Board's legal counsel. Mr. Alan McMahan and Ms. Janice Firestone, of the Review Board staff, were also present.

Approval of Minutes

Mr. Oglesby moved to approve the minutes of the June 17, 2011 meeting as presented in the Review Board members' agenda package. The motion was seconded by Mr. Lowe and passed unanimously with Messrs. Dawson, Epperson and Mays and Ms. Monday abstaining from the vote.

Final Orders

Appeal of Alfredo Hernandez; Appeal No. 07-12:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Lowe and passed unanimously with Messrs. Dawson, Epperson and Mays and Ms. Monday abstaining from the vote.

Final Orders

Appeal of Wedgewood Construction Company; Appeal No. 11-2:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Lowe and passed unanimously with Messrs. Dawson, Epperson and Mays and Ms. Monday abstaining from the vote.

New Business

Appeal of SNSA, Inc.; Appeal Nos. 11-9 and 11-10:

A preliminary hearing convened with the Chairman serving as the presiding officer. The preliminary hearing concerned whether appeals filed by SNSA, Inc., a corporation operating a restaurant located at 6220 Richmond Highway, in Fairfax County, were moot due to actions by SNSA, Inc. and Fairfax County government officials subsequent to the initial filing of the appeals with Fairfax County.

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

Doug McKinley, attorney for SNSA, Inc.  
Michael Congleton, for Fairfax County  
Carlton Burkhammer, Fairfax County Fire Marshal's Office

Also present was:

Paul Emerick, Esq., counsel for Fairfax County

No exhibits were submitted by the parties to supplement the documents in the Review Board members' agenda package.

After testimony concluded, the Chairman closed the preliminary hearing and stated a decision from the Review Board 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.

New Business

Decision - Appeal of SNSA, Inc.; Appeal Nos. 11-9 and 11-10:

After deliberation, Mr. Dawson moved to dismiss SNSA, Inc.'s appeals as moot based on past precedent and the legal considerations discussed. The motion was seconded by Mr. Mays and passed unanimously.

Appeal of Gary Pisner; Appeal Nos. 10-4 and 11-8:

A hearing convened with the Chairman serving as the presiding officer. Mr. Pisner's appeals concerned construction and demolition of structures on his property at 6439 Little Ox Road and action taken by Fairfax County under Parts I and III of the Virginia Uniform Statewide Building Code (USBC).

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

Gary Pisner  
Michael Congleton, for Fairfax County  
Paul Lynch, for Fairfax County

Also present was:

Paul Emerick, Esq., counsel for Fairfax County

The Chairman informed the parties that testimony would be taken first on the issue of whether Mr. Pisner's first appeal (Appeal No. 10-4) was moot due to the current state of affairs between Mr. Pisner and the County.

No exhibits were submitted by the parties to supplement the documents in the Review Board members' agenda package concerning the issue under consideration.

At the conclusion of the testimony, the Chairman closed the hearing for deliberation of Mr. Pisner's first appeal. Mr. Mays moved to dismiss Mr. Pisner's appeal as moot since there was compliance with County requirements and there were no issues which had been properly appealed left to be resolved. The motion was seconded by Mr. Lowe and passed unanimously.

New Business

Appeal of Gary Pisner; Appeal Nos. 10-4 and 11-8 (continued):

The Chairman then reopened the hearing for testimony concerning Mr. Pisner's second appeal (Appeal No. 11-8).

The following exhibit was submitted by Fairfax County and objected to by Mr. Pisner:

Exhibit A – Three page-sized printed pictures of the site

The Chairman ruled to exclude the exhibit as unnecessary given the extent of the record submitted in the matter.

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

Decision: Appeal of Gary Pisner; Appeal No. 11-8

After deliberating, Mr. Mays moved to uphold the decisions of the Fairfax County code official under Part III of the USBC (the Virginia Maintenance Code) and Fairfax County Board of Building Code Appeals that Mr. Pisner must remove all rubbish from the lot. The motion was seconded by Mr. Lowe. After further deliberation, Ms. Monday offered an amendment to the motion to add that Mr. Pisner's appeal to the Review Board be accepted as timely as Mr. Pisner followed the administrative procedures in place at the time in filing his appeal. The amendment was seconded by Mr. Oglesby and the vote on the amended motion passed unanimously.

New Business

Appeal of Sovereign Homes; Appeal No. 10-23:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned the construction of a single family residence located at 399 Hardwood Trail in Frederick County by Sovereign Homes, a local homebuilder, and determinations by the Frederick County USBC department that the construction of the roof did not comply with the USBC due to dormers being added and that a deck constructed on the rear of the house was in violation of the USBC due to an insufficient design to support a hot tub.

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

Wade Clements, for Sovereign Homes  
John S. Trenary, for Frederick County

Also present were:

Ty Lawson, Esq., counsel for Sovereign Homes  
Roderick B. Williams, Esq., counsel for Frederick County

The Chairman verified with the parties that the issue of the hot tub was withdrawn by Sovereign Homes due to correspondence from the Frederick County USBC department rescinding the cited violation.

The following exhibits were submitted by the parties to supplement the information in the Review Board members' agenda package:

Sovereign Homes Exhibit A – Six photographs of dormers  
Frederick County Exhibit A – Letter noting edition of code  
Frederick County Exhibit B – Five photographs of roof

Exhibit B from Frederick County was submitted with objection from Sovereign Homes. After consideration, the Chairman ruled to include the exhibit.

New Business

Appeal of Sovereign Homes; Appeal No. 10-23 (continued):

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

Decision: Appeal of Sovereign Homes; Appeal No. 10-23:

After deliberating, Mr. Mays moved to uphold the decisions of the Frederick County building official and board of appeals that the roof construction was in violation of the USBC due to the dormers. The motion was seconded by Mr. Crigler. After further deliberations, Mr. Mays offered an amended motion clarifying that the USBC violation was only for the structural design of the roof and did not include the roof leaks since the evidence submitted was insufficient and others had performed work on the flashing. The amended motion was seconded by Mr. Crigler and the vote on the amended motion passed unanimously.

Appeal of Stephen and Nicola Pace and Merrilee Miller; Appeal Nos. 11-5 and 11-6:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned a patio area in the rear of a townhome owned by Stephen and Nicola Pace and located at 11410 Hollow Timber Court, in Reston and citations by the Fairfax County Department of Code Compliance for violations of Part III of the USBC. Merrilee Miller, owner of an adjacent townhome, also appealed the citations for not requiring access to the siding on her townhome.

New Business

Appeal of Stephen and Nicola Pace and Merrilee Miller; Appeal Nos. 11-5 and 11-6 (continued):

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

Stephen and Nicola Pace  
Merrilee Miller  
Michael Congleton, for Fairfax County

Also present were:

Paul C. Miller, Esq., counsel for Merrilee Miller  
Paul Emerick, Esq., counsel for Fairfax County

Two exhibits (color pictures and a letter from an engineer) were submitted by Ms. Miller to Review Board staff to supplement the information in the Review Board members agenda package. The exhibits were held by Review Board staff until it was Ms. Miller's turn to provide testimony.

The Paces and Fairfax County representatives then provided testimony to the Review Board members. During testimony from Fairfax County representatives, it became apparent that a subsequent inspection had been performed by the Fairfax County Department of Code Compliance and the County's position was now that the Paces were in compliance with the USBC. The Chairman then informed the parties that the new circumstances raised the issue of whether the Paces' appeal was moot and the parties could address that issue. After testimony from the parties on the issue of whether the Paces' appeal was moot, the Chairman closed the hearing for discussion by the Board members. After discussion, Mr. Epperson moved to dismiss the Paces' appeal as moot. The motion was seconded by Mr. Crigler and passed unanimously.

New Business

Appeal of Stephen and Nicola Pace and Merrilee Miller; Appeal Nos. 11-5 and 11-6 (continued):

The Chairman granted a brief recess for Ms. Miller to discuss her appeal with counsel. The Chairman then reopened the hearing for opportunity for the parties to address Ms. Miller's appeal and then the hearing was closed for consideration by the Review Board members. After discussion, Mr. Oglesby moved to remand Ms. Miller's appeal to the Fairfax County Board of Building Code Appeals due to the change in circumstances in the citations by the County. The motion was seconded by Mr. Crigler and passed unanimously.

Interpretations

An interpretation request from the State Fire Marshal's Office (SFMO) concerning application of the control area provisions of the Virginia Statewide Fire Prevention Code (SFPC) was considered. After brief presentations by representatives of the SFMO and staff, and discussion by board members, Mr. Epperson moved to defer the interpretation request to the next board meeting for additional input. The motion was seconded by Mr. Oglesby and passed unanimously.

A second interpretation request from the SFMO concerning the definition of recreational fires in the SFPC and how it related to Kongming or sky lanterns was considered. After discussion, Mr. Dawson moved to answer the first question presented as follows:

QUESTION #1: Does the definition of "recreational fire" include Kongming lanterns or sky lanterns?

ANSWER: Yes.

The motion was seconded by Mr. Lowe.

After further discussion, Mr. Dawson moved to answer the second question presented as follows:

QUESTION #2: Once released into the air, is the rise and drifting of Kongming lanterns or sky lanterns still considered as being constantly attended?

ANSWER: No.

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Interpretations                    The motion was seconded by Mr. Lowe. A vote was then taken on the issuance of the questions and answers of Sections 302.1 and 307.5 of the SFPC, respectively, as Interpretation No. 2/2009. The vote passed unanimously.

Adjournment                        There being no further business, the meeting was adjourned by motion of Mr. Crigler at approximately 5:30 p.m.

Approved: November 18, 2011

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/s/  
Chairman, State Building Code Technical Review Board

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/s/  
Secretary, State Building Code Technical Review Board