

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD Friday, June 20, 2014 – 10:00 a.m.

Virginia Housing Center
4224 Cox Road
Glen Allen, Virginia

- I. Roll Call (**Tab 1**)
- II. Approval of March 21, 2014 Minutes (**Tab 2**)
- III. Public Comment
- IV. Approval of Final Order (**Tab 3**)

In Re: Appeal of Milari Madison
Appeal Nos. 13-3, 13-7 and 14-2

- V. Appeal Hearing (**Tab 4**)

In Re: Appeal of John A. Parrish & Maria P. Tungol
Appeal No. 13-8

- VI. Secretary's Report (**Tab 5**)

Proclamation for Vice-Chairman R. Schaefer Oglesby
COIA/FOIA Training

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Updated June 2, 2014

J. Robert Allen, CBO
Building Inspections Dept.
Henrico Co. Gov't. Center
2nd Floor
Post Office Box 90775
4301 East Parham Road
Henrico, VA 23273
H (804) 330-9637
All56@co.henrico.va.us
(VBCOA)

Matthew Arnold
1640 Trap Road
Vienna, VA 2182
H (310) 651-4940
Mda1618@gmail.com
(Va. Society of AIA)

W. Keith Brower, Jr.
39320 Rickard Road
Lovettsville, VA 20180
W (703) 777-0333
Keith.brower@loudoun.gov
(Commonwealth at large)

Vince Butler
5750 White Flint Court
Manassas, VA 20122
C (703) 928-4550
vbutler@bbcbuilders.com
(Home Builders
Association)

J. Daniel Crigler
935 Good Hope Church
Road
Aroda, VA 22709
W (540) 948-6230
C (540) 718-5602
jdc@ldassociatesinc.com
(VA. Assoc. of PHCC)

James R. Dawson
11122 Chester Garden Ct.
Chester, VA 23831
W (804) 717-6838
dawsonj@chesterfield.gov
(VA. Fire Chiefs Assoc.)

John H. Epperson, PE
4701 Feldspar Quay
Chesapeake, VA 23321
C (757) 615-4066
jhepe@yahoo.com
(Va. Soc. of Professional
Engineers)

Joseph A. Kessler, III
1033 Locust Avenue
Charlottesville, VA 22901
W (434) 220-0862
C (434) 962-0044
jay@kesslermail.com
(Assoc. of Gen.
Contractors)

John A. Knepper, Jr.
Trumbo Electric
Post Office Box 1
Broadway, VA 22815
W (540) 896-7095, Ext. 115
jak@trumboelectric.com
(Electrical Contractor)

Eric Mays, PE
12905 Chaparral Drive
Woodbridge, VA 22192
W (703) 792-6873
emays@pwcgov.org
(VBCOA)

Joanne D. Monday
Wilton Capitol Mgmt. Svcs.
Post Office Box 29628
Richmond, VA 23242
2520-A Gaskins Road
Richmond, VA 23238
H (804) 750-2272
W (804) 290-0808
C (804) 212-4434
jmonday@wiltoncms.com
(Va. Bldg. Owners and
Mgrs.)

Patricia O'Bannon
County Administrator's
Office
Henrico Co. Gov't. Center,
3rd Floor
4301 East Parham Road
Henrico, VA 23273
W (804) 501-4208
pob@patobannon.com
(Commonwealth at Large)

James M. Flaherty, Esq.
Assistant Attorney General
Financial Law and
Government Support
Section
Office of the Attorney
General
900 East Main Street
Richmond, VA 23219
W (804) 371-2381
Fax (804) 786-1991
jflaherty@oag.state.va.us

DRAFT MINUTES

STATE BUILDING CODE TECHNICAL REVIEW BOARD

MEETING
March 21, 2014

GLEN ALLEN, VIRGINIA

Members Present

Mr. J. Robert Allen, Chairman
Mr. W. Keith Brower, Jr.
Mr. Vince Butler
Mr. J. Daniel Crigler
Mr. James R. Dawson
Mr. John H. Epperson
Mr. John A. Knepper, Jr.
Mr. James N. Lowe
Mr. Eric Mays
Ms. Patricia S. O'Bannon

Members Absent

Mr. R. Schaefer Oglesby, Vice-Chairman
Mr. Matthew Arnold
Mr. Joseph A. Kessler, III
Ms. Joanne D. Monday

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. James M. Flaherty, Assistant Attorney General in the Office of the Attorney General, was present and serving as the Board's legal counsel.

Mr. Emory Rodgers, Deputy Director of the Division of Building and Fire Regulation within the Virginia Department of Housing Community Development (DHCD), responded to inquiries from Board members concerning Vice-Chairman Oglesby advising that he was at home but undergoing what could be a lengthy physical therapy. Well wishes were offered all around and Mr. Rodgers advised that he would inform the Vice-Chairman of the Board members thoughts and condolences and that his participation on the Review Board is missed.

Approval of Minutes

Mr. Lowe moved to approve the minutes of the January 24, 2014 meeting as presented in the Review Board members' agenda package. The motion was seconded by Mr. Epperson and passed unanimously with Mr. Knepper and Ms. O'Bannon abstaining from the vote.

Public Comment

The Chairman opened the floor for public comment. The Secretary reported that no one was preregistered. The Chairman closed the public comment period.

Final Orders

Appeal of Rave Soccer, LLC; Appeal No. 13-5:

After review by the Board members, Mr. Epperson moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Dawson and passed unanimously with Mr. Knepper and Ms. O'Bannon abstaining from the vote.

Appeal of Stark Jones, LLC; Appeal No. 13-6:

During review, Mr. Dawson questioned the need for the statement in the final order concerning a recommendation for a compliance alternative review to be considered by the parties. Mr. Epperson suggested that while such a review would be appropriate and was discussed during the deliberations at the appeal hearing, it was not an issue before the Review Board in the appeal. After further discussion, Mr. Crigler moved to approve the final order as presented in the Review Board members' agenda package with the removal of the statement concerning a compliance alternatives review. The motion was seconded by Mr. Butler and passed unanimously with Mr. Knepper and Ms. O'Bannon abstaining from the vote.

New Business

Appeal of Milari Madison; Appeal Nos. 13-3, 13-7 and 14-2:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned the construction, installation and set-up of Ms. Madison's modular home at 40153 Janney Street, in Loudoun County. The home was constructed under the Virginia Industrialized Building Safety Regulations (IBSR); a regulation and related program administered by DHCD's State Building Codes Office (SBCO).

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

Milari Madison
Cindy Davis, SBCO
Eric Leatherby, SBCO

New Business

Appeal of Milari Madison; Appeal Nos. 13-3, 13-7 and 14-2 (continued):

Also present was:

Mike Melis, Esq., legal counsel for the SBCO

Review Board staff advised the Chairman of a brief from the SBCO for Appeal No. 14-2 which was received after the timeframes established by staff for preparing the Review Board agenda package. Ms. Madison objected to the distribution of the brief. After consideration, the Chairman ruled not to distribute the brief.

After an explanation from Review Board staff concerning the delineation of the issues identified for resolution and with no objections from the parties, the Chairman indicated that each issue would be considered and deliberated separately.

The hearing then proceeded on the issue of whether the SBCO erred in determining that no violations of the IBSR existed relative to the floor system of the sunroom. After testimony concluded, the Chairman closed the hearing and deliberation of issue began. After discussion, Mr. Mays moved to uphold the decision of the SBCO since the sunroom was panelized and constructed on-site making it subject to Part I of the Virginia Uniform Statewide Building Code (the VCC), which is enforced by the local building department. The motion was seconded by Mr. Epperson and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed in the mating of the floor system to the foundation in the one-story den. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Mays moved to uphold the decision of the SBCO since the connection of the foundation to the home is regulated by the VCC. The motion was seconded by Mr. Crigler and passed unanimously.

New Business

Appeal of Milari Madison; Appeal Nos. 13-3, 13-7 and 14-2 (continued):

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed relative to size of the joist hangers used on the first floor joists. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Epperson moved to uphold the decision of the SBCO since end nailing was used to prevent rotation of the joists and the hangers used were properly sized for the loads. The motion was seconded by Mr. Mays and passed with Messrs. Crigler and Lowe voting in opposition.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed in the mating of the modules. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Mays moved to uphold the decision of the SBCO since the attachment of one module to another is site work subject to the VCC. The motion was seconded by Mr. Crigler and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed relative to the compliance assurance agency authorizing the labels to be affixed to the modules. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Dawson moved to uphold the decision of the SBCO since proper procedures were used in the issuance of the labels. The motion was seconded by Mr. Epperson and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed relative to the data plate. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Epperson moved to uphold the decision of the SBCO since the data plate correctly matched the factory-built aspects of the home. The motion was seconded by Mr. Dawson and passed with Mr. Brower and Ms. O'Bannon voting in opposition and Mr. Mays abstaining from the vote.

New Business

Appeal of Milari Madison; Appeal Nos. 13-3, 13-7 and 14-2 (continued):

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed due to inconsistencies between the plans and the actual construction. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Dawson moved to uphold the decision of the SBCO since the deviations from the plans did not create violations of the IBSR and are documented for the records for the home. The motion was seconded by Mr. Butler and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed relative to the roof's collar ties; hinged portions of the roof; an opening cut to the storage space above the master bedroom; and, the unevenness of the roof. After testimony concluded, the Chairman closed the hearing and deliberation of the issues began. After discussion, Mr. Mays moved to uphold the decisions of the SBCO due to the installation of collar ties and the hole to the storage space above the master bedroom being site work subject to the VCC and due to the lack of evidence that the hinged portions of the roof or the unevenness of the roof constituted structure problems. The motion was seconded by Mr. Crigler and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed in the electrical service. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Knepper moved to uphold the decision of the SBCO since the electrical service was modified at the site. The motion was seconded by Mr. Lowe and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in not issuing any notices of violation to NTA, Inc., the compliance assurance agency responsible for third party inspections of the home. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Lowe moved to uphold the decision of the SBCO since there was insufficient evidence that NTA, Inc. violated any of the provisions of the IBSR. The motion was seconded by Ms. O'Bannon and passed unanimously.

New Business

Appeal of Milari Madison; Appeal Nos. 13-3, 13-7 and 14-2 (continued):

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violation of the IBSR existed in the sizing of the floor joists under the kitchen. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. May moved to uphold the decision of the SBCO since the load analysis provided by NTA, Inc. indicated compliance with the IBSR. The motion was seconded by Mr. Epperson and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violation of the IBSR existed in relation to the approval of the plans and the placement of the seals and labels on the home. During testimony, Mr. Dawson moved that the issue was moot due to prior discussions and decisions. There was no opposition from the parties. The motion was seconded by Ms. O'Bannon and passed unanimously.

The Chairman then reopened the hearing for consideration of whether there were any other issues identified by Ms. Madison which were properly before the Review Board. After testimony concluded, the Chairman closed the hearing. After discussion, Mr. Mays moved that no further issues were properly before the Review Board. The motion was seconded by Ms. O'Bannon and passed unanimously with Mr. Dawson abstaining from the vote.

Secretary's Report

Mr. Flaherty discussed developments concerning Review Board Appeal No. 11-13; Appeal of Glenn Yates, Jr., which had been appealed to, and heard by, the City of Portsmouth Circuit Court. The Court had agreed to another hearing at the request of legal counsels for the City of Portsmouth building official and the Review Board seeking clarification of the Court's decision. A further proceeding is scheduled in May of 2014 for the Court to determine the wording of the order to be entered.

State Building Code Technical Review Board
March 21, 2014 Minutes - Page Seven

Adjournment

There being no further business, the meeting was adjourned by motion of Mr. Epperson at approximately 4:45 p.m.

Approved: June 20, 2014

Chairman, State Building Code Technical Review Board

Secretary, State Building Code Technical Review Board

VIRGINIA:

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

IN RE: Appeal of Milari Madison
Appeal Nos. 13-3, 13-7 and 14-2

Hearing Date: March 21, 2014

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. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Ms. Milari Madison (Madison), a resident of Loudoun County, entered negotiations to purchase and have erected a modular home on her property at 40153 Janney Street, in or around the spring of 2011, with Integrity Building Systems (Integrity), a Pennsylvania-based manufacturer.

Construction drawings for the home, dated May 24, 2010, identify it as a custom two-story model and identify the builder/dealer involved in the project as Convenient Installation, from Ranson, West Virginia.

The home consisted of a number of units, or modules, which, in July of 2011, were delivered to the Madison site and installed upon a pre-erected foundation constructed by others for Ms. Madison.

During and after the erection of the home, Madison identified numerous problems. Convenient Installation, which had performed much of the work in setting the home, ceased involvement in the project, and Integrity allegedly went out of business. Madison contacted the Loudoun County Department of Building and Development (local building department) for assistance since a local building permit had been obtained for the project and Madison also contacted the Virginia Department of Housing and Community Development's State Building Codes Office (SBCO), the state agency responsible for administering the Virginia Industrialized Building Safety Regulations, which provides oversight of the modular home manufacturing industry.

In April of 2012, representatives of the local building department and the SBCO conducted a site inspection. In subsequent correspondence, the SBCO informed Madison it could not take any action due to Integrity being out of business.

Madison filed an appeal of the SBCO's determination to the Review Board and a hearing was held in March of 2013. The appeal was withdraw by Madison at the hearing based on written assurances that Milton Home Systems, Inc. (Milton), a successor in name to Integrity, would fulfill Integrity's contractual obligations.

In March and July of 2013, Madison filed Industrialized Building Consumer Complaint forms with the SBCO outlining problems with the home and its installation. After investigation, the SBCO responded with decisions dated April 15 and September 23, 2013. Both decisions were appealed to the Review Board by Madison; the April 15th decision appeal being assigned Appeal No. 13-3 and the September 23rd decision appeal being assigned Appeal No. 13-7 by Review Board staff.

Review Board staff conducted informal fact-finding conferences in July of 2013 and January of 2014 to clarify the issues in the appeals. At the January 2014 conference it was noted that Madison had filed a third consumer complaint form concerning the length of the floor joists under the kitchen and an issue of the state seals on the home being applied prior to the home being approved by NTA, Inc., the third party compliance assurance agency used by the manufacturer for monitoring the construction of the home under the IBSR. The parties were informed that if the SBCO made a decision concerning those

issues and if Madison appealed those decisions, then that appeal would be heard at the same hearing before the Review Board which would be scheduled for Appeal Nos. 13-3 and 13-7. That did in fact occur and the third appeal was assigned Appeal No. 14-2 by Review Board staff.

Review Board staff compiled the record for the three appeals, distributed it to the parties, and the hearing before the Review Board was held with Madison and representatives of the SBCO and its legal counsel present.

III. FINDINGS OF THE REVIEW BOARD

Appeal No. 13-3

The issue in this appeal is whether the SBCO should have issued any notices of violation under the IBSR to NTA, Inc.

Madison asserts that NTA, Inc. violated the IBSR by (i) permitting certification labels to be affixed to the modules of the home while violations of the IBSR existed, (ii) not resolving all complaints, (iii) not having installation instructions applicable to the home, (iv) failing to keep a list of certification labels issued, and (v) allowing inaccurate information to be on the manufacturer's data plate for the home.

Madison argues that both § 13VAC5-91-90 of the IBSR, which references the statutory language addressing violations of the

IBSR in § 36-83 of the Code of Virginia, and states in pertinent part that “any person, firm or corporation violating any provisions of this chapter shall be considered guilty of a misdemeanor[,]” and the sections of the IBSR addressing the authority of the SBCO as administrator of the IBSR require the SBCO to take action against NTA, Inc. by issuing a notice of violation and then pursuing prosecution if the violations are not remedied.

The SBCO argues that the statutory and regulatory scheme for the SBCO’s enforcement of the IBSR is to compel manufacturers to correct any violations discovered, through prosecution, if necessary; however, the regulation of compliance assurance agencies is through the administrative procedures outlined in §§ 13VAC5-91-40 B and 13VAC5-91-180 through 13VAC5-91-200 of the IBSR, which requires the SBCO to approve compliance assurance agencies, to maintain a list of approved agencies and to require such agencies to submit assurances and documentation to the SBCO in the approval process.

The SBCO submits that as a result of Madison’s complaints, it has initiated a review of the procedures NTA, Inc. used in the oversight of the construction of Madison’s house and in the policies and procedures that NTA, Inc. has in place to serve as a compliance assurance agency for any manufacturer, and, that

NTA, Inc.'s approval as a compliance assurance agency may be revoked or suspended if warranted.

The Review Board finds that some of Madison's allegations relate to the actual construction of the home and have been determined by the Review Board to not be violations of the IBSR, as outlined in the findings of the Review Board under Madison's Appeal No. 13-7, below. With respect to other allegations in Madison's complaint involving procedures or actions of NTA, Inc. in their responsibilities as the compliance assurance agency for the manufacturer of Madison's home, the Review Board finds, as the SBCO argues, that the SBCO's use of the IBSR's administrative procedures for the review and continued approval of compliance assurance agencies is the proper application of the IBSR in response to Madison's complaint.

Appeal No. 13-7

In a number of complaints listed by Madison, a preliminary issue of whether the aspects of construction in question were subject to the IBSR or to the Virginia Uniform Statewide Building Code (USBC), as site work, was considered, since her appeal to the Review Board would be invalid if the SBCO had no enforcement authority concerning those aspects of construction. Madison would have to obtain decisions from the local building department on those aspects of construction in question and file

an appeal through the USBC's appeals procedures if disagreeing with such decisions of the local building department.

Accordingly, arguments were presented concerning whether the ISBR was applicable to those aspects of construction.

Madison argues that § 13VAC5-91-80 of the IBSR, which states that "[t]he manufacturer of a registered industrialized building shall not be required to remedy violations caused by on-site work by others not under his control or violations involving components and materials furnished by others and not included with the registered industrialized building[]" must be read inversely to say that the manufacturer is required to remedy on-site violations caused by any work under the control of the manufacturer and that the manufacturer is required to remedy violations involving any components or materials furnished by the manufacturer.

The SBCO argues that § 13VAC5-91-80 must be read in conjunction with § 13vac5-91-20 C, which addresses the general application of the IBSR and states in pertinent part that "[i]n accordance with § 36-99 of the Code of Virginia and in accordance with the USBC, the installation or erection of industrialized buildings and alterations, additions, or repairs to industrialized buildings are regulated by the USBC and not [the IBSR]" and in conjunction with § 13VAC5-91-100 C which addresses the duties and responsibilities of local building

officials and states in pertinent part that "[i]n accordance with § 36-99 of the Code of Virginia and the USBC, all site work associated with the installation or erection of an industrialized building is subject to the USBC."

The Review Board finds that the foregoing provisions of the IBSR may be read without conflict and provide that the local building official regulates all site work involved in the installation of an industrialized building under the USBC and may cite any responsible party but the manufacturer if the site work is not under the control of the manufacturer, and further that the local building official may not cite the manufacturer for violations of the USBC for site work involving components or materials not included with the industrialized building.

Accordingly, Madison's complaints concerning the panelized sunroom addition; the positioning of the modules on the foundation creating overhangs without blocking; the connection of the modules together; the lack of or improper installation of collar ties; the positioning of the hinged portions of the roof; and, the cutting of the roof rafters to create access to a storage space are all site work which is subject to the USBC and not the IBSR and Madison must address those issues with the local building department.¹

¹ These issues correlate with decisions made by the SBCO in the September 23, 2013 letter identified as response numbers 1, 3, 5, 9, 10, 11 and 12, respectively.

In the five remaining issues, Madison argues that certain aspects of the construction of her home do not meet the technical standards set out in the IBSR or that certain procedural requirements of the IBSR were not met. The SBCO argues that no violations of those technical standards exist and proper procedures were used. Both parties provided evidence and testimony to support their position.

The Review Board finds as follows:²

The size of the joist hangers on the first floor joists: End nailing of the joists was used in addition to the use of joist hangers which prevents the concern raised by Madison of rotation of the joists. No violation of the IBSR exists.

Placement of labels on the modules: The modules were red-tagged by NTA, Inc. until the plans were approved, which is an acceptable practice in the industry.

Correctness of the data plate: The data plate correctly matches the factory built modules and is not required to be altered due to modifications of the home made at the site. No violation of the IBSR exists.

Deviations from the plans and roof unevenness: Deviations from the plans involving the factory built modules were documented by NTA, Inc. and will remain with the records of the manufacturer. The roof unevenness does not indicate any structural or functional problem, so it is a contractual issue only. No violation of the IBSR exists.

Electrical service: The service panel and wiring for the factory built modules fully comply with the IBSR. Modifications to the system occurring at the site are subject to the USBC.

² These issues correlate with decisions made by the SBCO in the September 23, 2013 letter identified as response numbers 4, 6, 7, 8 and 13, respectively.

Appeal No. 14-2

Madison argues that the floor joists in the kitchen floor are undersized and provides a letter from a Virginia-registered professional engineer. The SBCO relied on measurements and calculations performed by NTA, Inc., also submitted by a Virginia-registered professional engineer, in its determination that the joists comply with the IBSR.

The Review Board finds that the evidence confirms that the floor joist size and length comply with the 2009 edition of the International Residential Code, the technical standard referenced by the IBSR. Therefore, no violation of the IBSR is present.

Madison raised additional issues concerning the approval of the plans and the placement of the seals and labels on the home. The Review Board finds those issues to have been addressed in Appeal No. 13-3 and in the findings of the Review Board in this order.

IV. FINAL ORDER

Madison's appeals having been given due regard, and for the reasons set out herein, the Review Board orders the decisions of the SBCO to be, and hereby are, upheld.

Chairman, State Technical Review Board

Date Entered

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

IN RE: Appeal of John A. Parrish and Maria P. Tungol
Appeal No. 13-8

CONTENTS

<u>Section</u>	<u>Page No.</u>
Review Board Staff Document	22
Combined Documents	25

VIRGINIA:

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

IN RE: Appeal of John A. Parrish and Maria P. Tungol
Appeal No. 13-8

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1. In August of 2013, in enforcing Part III of the Virginia Uniform Statewide Building Code (Virginia Maintenance Code), the Fairfax County Department of Code Compliance (FCDCC) performed an inspection of an existing single family dwelling at 5820 Fifer Drive. The home is owned by John A. Parrish and Maria P. Tungol (Parrish/Tungol).
2. As a result of the inspection, FCDCC issued a notice of violation dated September 4, 2013, delivered by certified mail, and a notice of violation served by the Office of the Sheriff of Fairfax County. The notice delivered by certified mail included an additional citation for accessory structures.
3. By letter dated September 18, 2013, Parrish/Tingol filed an appeal of the notice of violation which included the reference to accessory structures to the Fairfax County Board of Building Code Appeals (County appeals board) arguing that the citations were invalid since no conditions on the property were dangerous to the health, safety and welfare of the occupants or the public.
4. The County appeals board heard the appeal on October 11, 2013 and ruled to uphold FCDCC's issuance of the notice.

5. Parrish/Tungol further appealed to the Review Board by application dated November 19, 2013.

6. Review Board staff contacted Parrish/Tungol and FCDCC to schedule an informal fact-finding conference. Parrish/Tungol responded by stating that because they lived in Pennsylvania and their arguments were clearly set out in the documents submitted with the appeal, they would not be attending the conference.

7. Review Board staff advised the parties that the appeal to the Review Board would proceed by the drafting of this staff document for review by the parties and then scheduling a hearing before the Review Board.

8. The violations of the Virginia Maintenance Code cited by FCDCC are summarized as follows:

- a. Broken fence in left side yard where limb damaged fence.
- b. Paint on the upper front and side exterior surface is peeling and flaking.
- c. Vegetation or plants growing on the front roof and gutter.
- d. Front storm door is damaged and unable to be secured.

9. Parrish/Tungol argue that Section 103.2 of the Virginia Maintenance Code prohibits FCDCC from citing a violation unless conditions are present which make a structure an unsafe structure or a structure unfit for human occupancy, and that the conditions present do not qualify as such.

10. FCDCC argued in a brief to the County appeals board that the violations were for a lack of maintenance and that Section 103.2 was not applicable.

11. This Review Board staff document will be distributed to the parties and an opportunity given for the submittal of corrections, objections or additions to the document as

well as opportunity for the submittal of additional documents for the record. A copy of all documents in the record to date will be submitted to the parties with the Staff Document and timeframes will be set for any submittals. A hearing will then be scheduled before the Review Board.

Suggested Issue for Resolution by the Review Board

1. Whether to overturn the decisions of FCDCC and the County appeals board.

COMBINED DOCUMENTS



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Maintenance Code

DATE OF ISSUANCE: September 04, 2013

METHOD OF SERVICE: CERTIFIED MAIL # 70111570000088488109

**LEGAL NOTICE ISSUED TO:
ADDRESS:** John A. Parrish
Maria P. Tungol
304 Berkley Road
Merion Station, PA 19066

LOCATION OF VIOLATION: 5820 Fifer Drive
Alexandria, Virginia 22303-1917

TAX MAP REF: 83-1 ((11)) 19A

CASE #: 201305812 **SR #:** 98146

POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

CODE § 61-7-1(B):	Maintenance Code Violation(s)	First Offense	Each Subsequent Offense
	§VMC302.7	\$ 100.00	\$ 150.00
	§VMC304.15	\$ 100.00	\$ 150.00
	§VMC304.2	\$ 100.00	\$ 150.00
	§VMC304.7	\$ 100.00	\$ 150.00
TOTAL:		\$ 400.00	\$ 600.00

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code-2009 Edition), an inspection on August 27, 2013 revealed violations as listed below at the referenced location. The cited violations must be corrected within **30 days** from receipt of this notice unless otherwise indicated.

Violation: ACCESSORY STRUCTURES

VMC 302.7. All accessory structures, including detached garages, fences and walls, shall be maintained structurally sound and in good repair.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-324-9346
www.fairfaxcounty.gov/code

John A. Parrish
Maria P. Tungol
September 04, 2013
SR 98146
Page 2

Location: side yard

Work To Be Performed: replace/repair broken fence in area where tree has fallen on it

Violation: DOORS

VMC 304.15. All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units, rooming units and guest rooms shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 702.3.

Location: front door

Work To Be Performed: repair/replace damaged storm door

Violation: PROTECTIVE TREATMENT

VMC 304.2. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

Location: front and side upper portion of home

Work To Be Performed: remove peeling paint and repaint surface

Violation: ROOF AND DRAINAGE

VMC 304.7. 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.

Location: front roof

Work To Be Performed: remove plant growth from roof and gutter

John A. Parrish
Maria P. Tungol
September 04, 2013
SR 98146
Page 3

All repairs, alterations, and/or additions must be made in accordance with applicable laws. Any additional violations that may appear as work progresses will require correction.

Information about obtaining any necessary permits required by other Fairfax County agencies may be obtained by calling (703)222-0801 and requesting the appropriate department. The owner of a building or structure, or the owner's agent or any other person involved in the use of the subject building or structure may appeal a decision of the Code Official concerning the application of the Virginia Maintenance Code to such building or structure and may also appeal a refusal by the Code Official to grant a modification to the provisions of this code pertaining to such building or structure. Applications for appeals shall be submitted in writing to the Fairfax County Board of Building and Fire Prevention Code Appeals within 14 calendar days of the decision being appealed. Appeal application forms may be obtained by contacting:

Fairfax County Board of Building and Fire Prevention Code Appeals
Attention: Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals
Department of Public Works and Environmental Services
12055 Government Center Parkway, Suite 444
Fairfax, VA 22035-5504
Phone: (703)324-1780

Information and forms can also be obtained at:

http://www.fairfaxcounty.gov/dpwes/publications/codemods_appeals.htm

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

The Fairfax County Board of Building and Fire Prevention Code Appeals shall meet within 30 calendar days after the date of receipt of the application for appeal.

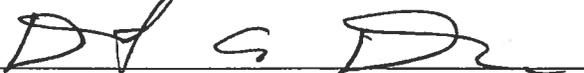
A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Virginia Maintenance Code which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$100.00 for each violation cited herein for the first violation and \$150.00 for each subsequent violation cited herein per day totaling up to \$4,000.00 in accordance with Fairfax County Code § 61-7-1(B).

John A. Parrish
Maria P. Tungol
September 04, 2013
SR 98146
Page 4

In accordance with the code, the owner or person to whom this notice of violation has been issued is responsible for contacting me within the time frame established for any re-inspections to assure the violations have been corrected.

If you have any questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-1562. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:


Signature

David Domin
Code Compliance Investigator
(703)324-1562



County of Fairfax, Virginia

DCC Return Copy

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Maintenance Code

DATE OF ISSUANCE: September 04, 2013

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: John A. Parrish
Maria P. Tungol

ADDRESS: 5820 Fifer Drive
Alexandria, Virginia 22303-1917

LOCATION OF VIOLATION: 5820 Fifer Drive
Alexandria, Virginia 22303-1917

TAX MAP REF: 83-1 ((11)) 19A

CASE #: 201305812 **SR #:** 98146

POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

CODE § 61-7-1(B):	Maintenance Code Violation(s)	First Offense	Each Subsequent Offense
	§VMC302.7	\$ 100.00	\$ 150.00
	§VMC304.15	\$ 100.00	\$ 150.00
	§VMC304.2	\$ 100.00	\$ 150.00
	§VMC304.7	\$ 100.00	\$ 150.00
TOTAL:		\$ 400.00	\$ 600.00

Location: side yard

Work To Be Performed: replace/repair broken fence in area where tree has fallen on it

Violation: DOORS

VMC 304.15. All exterior doors, door assemblies and hardware shall be maintained in good condition. Locks at all entrances to dwelling units, rooming units and guest rooms shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 702.3.

Location: front door

Work To Be Performed: repair/replace damaged storm door

Department of Code Compliance
 12055 Government Center Parkway, Suite 1016
 Fairfax, Virginia 22035-5508
 Phone 703-324-1300 Fax 703-324-9346
www.fairfaxcounty.gov/code

John A. Parrish
Maria P. Tungol
September 04, 2013
SR 98146
Page 2

Violation: PROTECTIVE TREATMENT

VMC 304.2. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

Location: front and side upper portion of home

Work To Be Performed: remove peeling paint and repaint surface

Violation: ROOF AND DRAINAGE

VMC 304.7. 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.

Location: front roof

Work To Be Performed: remove plant growth from roof and gutter

All repairs, alterations, and/or additions must be made in accordance with applicable laws. Any additional violations that may appear as work progresses will require correction.

Information about obtaining any necessary permits required by other Fairfax County agencies may be obtained by calling (703)222-0801 and requesting the appropriate department. The owner of a building or structure, or the owner's agent or any other person involved in the use of the subject building or structure may appeal a decision of the Code Official concerning the application of the Virginia Maintenance Code to such building or structure and may also appeal a refusal by the Code Official to grant a modification to the provisions of this code pertaining to such building or structure. Applications for appeals shall be submitted in writing to the Fairfax County Board of Building and Fire Prevention Code Appeals within 14 calendar days of the decision being appealed. Appeal application forms may be obtained by contacting:

John A. Parrish
Maria P. Tungol
September 04, 2013
SR 98146
Page 3

Fairfax County Board of Building and Fire Prevention Code Appeals
Attention: Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals
Department of Public Works and Environmental Services
12055 Government Center Parkway, Suite 444
Fairfax, VA 22035-5504
Phone: (703)324-1780

Information and forms can also be obtained at:
http://www.fairfaxcounty.gov/dpwes/publications/codemods_appeals.htm

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

The Fairfax County Board of Building and Fire Prevention Code Appeals shall meet within 30 calendar days after the date of receipt of the application for appeal.

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Virginia Maintenance Code which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$100.00 for each violation cited herein for the first violation and \$150.00 for each subsequent violation cited herein per day totaling up to \$4,000.00 in accordance with Fairfax County Code § 61-7-1(B).

In accordance with the code, the owner or person to whom this notice of violation has been issued is responsible for contacting me within the time frame established for any re-inspections to assure the violations have been corrected.

If you have any questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703)324-1562. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:



Signature

David Domin
Code Compliance Investigator
(703)324-1562

PERSONAL SERVICE

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
- Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

_____ *S.S. Gonzalez* _____
SERVING OFFICER

_____ for _____
DATE 9-4-13 Mark W. Sites, Sheriff

PERSONAL SERVICE

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
- Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

_____ *S.S. Gonzalez* _____
SERVING OFFICER

_____ for _____
DATE 9-4-13 Mark W. Sites, Sheriff

PERSONAL SERVICE

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
- Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

SERVING OFFICER

_____ for _____
DATE _____

PERSONAL SERVICE

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
- Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

SERVING OFFICER

_____ for _____
DATE _____

Date: September 18, 2013

Chairman
Fairfax County Board of Building Code Appeals
12055 Government Center Parkway, Suite 444
Fairfax, Virginia 22035-5504
Attention: Secretary to the Board

130918.1AP

We wish to appeal a decision of the Fairfax County Maintenance Official as permitted under the current edition of the Virginia Uniform Statewide Building Code.

The subject of this appeal is located at: 5820 Fifer Drive, Alexandria, VA Tax Map Ref: 83-1 ((11)) 19A
Subdivision: Huntington Section No. 8 Lot No. 19A

As the building owners, we hereby appeal the decision of the Fairfax County Code Official noted above whereby it was determined that property owners were required under the cited sections of the VMC to replace/repair a broken section of a chain link fence, repair/replace the front storm door, remove peeling paint and repaint front & side siding on upper section of brick building, and remove plant growth from roof & gutter.

The decision of the Code Official was rendered on: September 4, 2013 in a Notice of Violation (Ex. C)
The Code Official's decision was based on the following code and section(s):
Virginia Maintenance Code 2009 Editions Sections VMC 302.7, 304.15, 304.2, and 304.7

This appeal is being filed for the following reasons discussed in Ex. B:

Issuance of the Notice violates VMC 103.2 (Ex. A) in failing to include 1) determination that the cited conditions present at the above property meet the definition of unsafe structure or a structure unfit for human occupancy and 2) evidence and reasons why the cited conditions meet the definition of an unsafe structure that is "dangerous to the health, safety and welfare of the occupants of the building or the public" (VMC, Chapter 2, Definitions).

The conditions present at the above property cited in the Notice are not "dangerous to the health safety and welfare of the occupants of the building or the public".

The Notice constitutes abuse of authority by the Code Official, attempted deception of building owners, and misuse of taxpayer resources.

The following points are relevant for the reasons discussed in Ex. B:

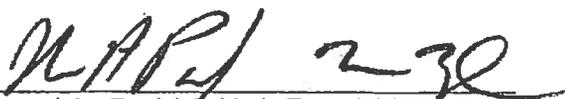
The Code Official and his/her agents are presumed to know all sections of the VMC.

The Notice fails to give building owners any notice of VMC 103.2 and fails to describe any conditions present at their property that would cause a reasonable person to consider the above property to be "dangerous to the health safety and welfare of the occupants of the building or the public".

The Notice does not cite any violations of VMC 105 "Unsafe Structures or Structures Unit for Occupancy"

The Notice prominently lists the possible fines on the first page of the Notice before stating the code sections and conditions that allegedly violate these sections.

Building owners are seniors who reside in Pennsylvania.

Signature: 

Owners' Names: John Parrish & Maria Tungol, h/w
Address: 304 Berkeley Road, Merion, PA, 19066
Email: japarrish@patlawus.com Telephone: 610 660 7786

Fax: 703 960 6008



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

DATE: September 20, 2013

TO: Chairman and Members
Fairfax County Board of Building and Fire Prevention Code Appeals

FROM: Jeffrey L. Blackford
Virginia Maintenance Official
Director, Department of Code Compliance 

SUBJECT: Board of Appeals Hearing October 9, 2013

REFERENCE: Appeal of John A. Parrish and Maria P. Tungol
5820 Fifer Drive
Alexandria, Virginia 22303

CODE: 2009 Virginia Maintenance Code

Staff of the Department of Code Compliance respectfully requests that the Board of Building and Fire Prevention Code Appeals uphold the decision of the Notice of Violation dated September 4, 2013. Staff contends that the single family dwelling unit located at 5820 Fifer Drive, Alexandria, Virginia was deemed to have Protective Treatment (paint), Roof and Drainage (front roof and gutter), Accessory Structure (fence), and Door (front storm) issues in violation of the 2009 Virginia Maintenance Code.

Background Information

An exterior inspection of this property was performed on August 27, 2013 based on an open complaint filed with the Department of Code Compliance. The inspection revealed a tree which had fallen onto the left side yard chain link fence causing damage to said fence. The inspection also revealed peeling paint on the siding on the upper front and side of the dwelling. Also observed was vegetation growing from the gutter and roof on the left front of the dwelling. The aforementioned issues were observed from the sidewalk in front of the residence. While approaching the front door for the purpose of leaving a door hanger for the occupant it was observed that the front storm door was damaged and incapable of being able to be properly secured. Photographs were taken of the aforementioned violations (See Attachment). Based on that inspection, on September 4th, 2013 a Notice of Violation was completed by Investigator David A. Domin and sent via Certified Mail to the property owners at their address in Merion Station, Pennsylvania. On September 9, 2013 the Notice of Violation was received and signed

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-9346
www.fairfaxcounty.gov/code

for by the owners. (See Attachment).

Issues:

Notice of Violation of VMC 302.7 Accessory Structures, VMC 304.7 Protective Treatment, VMC 304.2 Roof and Drainage, VMC 304.15 Doors

Appellants Position for the Notice of Violation - Sec. 302.7, 304.7, 304.2, and 304.15 of the 2009 VMC

1. Per the appellant's appeal response it is unclear what his position is regarding the aforementioned code sections because in his appeal he has cited sections of the Code that are not relevant to the Notice of Violation.

County Position Supporting the Notice of Violation –Sect. 302.7, 304.7, 304.2 and 304.15 of the 2009 VMC:

1. *ACCESSORY STRUCTURES – VMC 302.7*

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

- The side yard chain link fence is damaged and a tree limb is laying on it

2. *PROTECTIVE TREATMENT - VMC 304.7*

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

- The paint on the upper exterior surface is peeling and flaking

3. *ROOF AND DRAINAGE - VMC 304.2*

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.

- Vegetation is growing in the front gutter and on the front roof

4. DOORS - *VMC 304.15*

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

- The front storm door is damaged and is not able to be secured

Recommendation:

The purpose of the Building Code is to protect the “health, safety, and welfare of the residents of the Commonwealth of Virginia” (VUSBC § 102.1) . It is the Department’s position that based on the condition of this residence, the conditions set forth in the September 4, 2013 Notice of Violation, pose a significant safety concern.

Based of the facts provided, staff is requesting the Board uphold the decision of the department, and allow staff to proceed with the appropriate enforcement and legal proceedings as authorized in the USBC.

Attachments: As stated

RESOLUTION

WHEREAS, the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of the enforcement of the VMC, 2009 edition.

and

WHEREAS, an appeal has been timely filed and brought to the attention of the Board, and
WHEREAS, a hearing has been duly held to consider the aforementioned appeal, and
WHEREAS, the Board has fully deliberated this matter; now, therefore, be it

RESOLVED, That the matter of

Appeal No. 130918.1AP
In RE: John A. Parrish and
Maria P. Tungol
5820 Fifer Drive
Alexandria, VA 22303

v. Fairfax County Department of
Code Compliance

The appeal is hereby denied by a vote of 5-1.

FURTHER, be it known that:

1. This decision is solely for this case and its surrounding circumstances.
2. This decision does not serve as a precedent for any future cases or situations, regardless of how similar they may appear.

Date: 10/11/2013

Signature: J. Christopher Fox
J. Christopher Fox
Chairman, Board of Building Code Appeals

Note: Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219 or by calling 804-371-7150.

I Carla Moran hereby certify that this is
CUSTODIAN
 a true copy of a Fairfax County Department of
 Public Works & Environmental Services record of which
 I am a custodian.

Carla Moran
CUSTODIAN

I Michelle Buckner hereby certify that this is
SUPERVISOR OF CUSTODIAN
 a true copy of a Fairfax County Department of
 Public Works & Environmental Services record of
 which Carla Moran is the custodian and that

Carla Moran reports to me.
CUSTODIAN
Andy Clark for Michelle Buckner
SUPERVISOR OF CUSTODIAN

Appeal of John A. Parrish and Maria P. Tungol of the decision of the Fairfax County Board of Building Code Appeals dated October 11, 2013

STATEMENT OF SPECIFIC RELIEF REQUESTED

Owners request that State Building Code Technical Review Board ("State Review Board") reverse the decision of Fairfax County Board of Building Code Appeals ("FC Board") dated October 11, 2013 ("FC Board Decision") denying Owners' appeal of the Notice of Violation dated September 4, 2013 ("Notice of Violation") for violation of VMC 302.7, 304.15, 304.2, and 304.7.

Owners request that State Review Board reverse the Notice of Violation issued by the Fairfax County code official in its entirety as being in violation of VMC 103.2.

Facts:

It is undisputed that Owner's property at 5820 Fifer Drive, Alexandria, VA 22303 was and remains an existing building and that the fence around the property was and remains an existing structure (building and structure collectively are hereafter "Property") as of September 4, 2013.

The Notice of Violation does not contain any statement that there are any conditions at Owner's Property that "meet the definition of an unsafe structure or a structure unfit for human occupancy".

There is no evidence in the records relating to the Notice of Violation, including photos taken at Owner's Property, that show any conditions at Owner's Property which "meet the definition of an unsafe structure or a structure unfit for human occupancy".

VMC 103.2 states: "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". The definition of an unsafe structure is a structure that is "dangerous to the health, safety and welfare of the occupants of the building or the public" (VMC, Chapter 2, Definitions).

Neither the FC Board nor the Fairfax County code official disputes that VMC 103.2 applies to all of the provisions of the 2009 Virginia Maintenance Code, including but not limited to VMC 302.7, 304.15, 304.2 and 304.7.

Neither the FC Board nor the Fairfax County code official dispute that there is no evidence in the records relating to the Notice of Violation, including photos taken at Owner's Property, that show any conditions at Owner's Property that "meet the definition of an unsafe structure or a structure unfit for human occupancy".

Neither the FC Board nor the Fairfax County code official disputes Owners' position that the issuance of the Notice of Violation based on VMC 302.7, 304.15, 304.2 and 304.7 is in violation of VMC 103.2.

The FC Board Decision did not state any reason for denying Owners' appeal.

Appeal of John A. Parrish and Maria P. Tungol of the decision of the Fairfax County Board of Building Code Appeals dated October 11, 2013

Owners submit that the summary denial of Owners' appeal without stating any written reason constitutes denial of Owners' right to due process of law.

Owners also submit that the practice of issuing a Notice of Violation without 1) a statement of VMC 103.2 and 2) statement of the reason(s) why conditions cited in the Notice of Violation "meet the definition of an unsafe structure or a structure unfit for human occupancy" deprives Virginia property owners of their right to due process of law because the VMC states that failure to appeal "shall constitute an acceptance of the code official's decision" (VMC 106.5). Notice of VMC 103.2 is as important as, if not more important than notice of the right to appeal, especially in view of the consequences of failing to appeal within the time period set by the VMC.

In view of the above and the reasons set forth in Owners' Appeal dated September 18, 2013, herein incorporated by reference in its entirety, Owners submit that the FC Board erred in denying Owners' appeal and request that the State Review Board reverse the FC Board decision and reverse the Notice of Violation issued by the Fairfax County code official in its entirety.



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

November 26, 2013

State Building Code Technical Review Board
Department of Housing and Community Development
Commonwealth of Virginia
501 North 2nd Street
Richmond, Virginia, 23219-1321

DEC 16 2013
RWM

Attention: Mr. Alan McMahan, Senior Construction Inspector II
Staff – State Technical Review Board

Reference : Appeal of John A. Parrish and Maria P. Tongol, (Appeal 13-8)

Dear Mr. McMahan,

In response to your e-mail request, dated November 21, 2013, regarding the appeal of Mr. John A. Parrish and Maria P. Tongol, I am forwarding documents pertinent to this case for your review and use.

The Department of Code Compliance conducted an investigation of 5820 Fifer Drive in August of this year, based on a complaint received. Our Virginia Maintenance Code investigator observed violations of the Virginia Maintenance Code and properly cited the owner(s) to require that corrective measures be taken. In accordance with Section 103.2 "Maintenance Requirements" of the Virginia Maintenance Code, it is the intent of this department that the buildings and/or structures cited be repaired and maintained in accordance with the USBC provision(s) under which they were originally constructed at that time, if applicable.

I have attached to this letter for your review the following documents:

1. Resolution of the Fairfax County Local Board of Building Code appeals dated October 11, 2013
2. Fairfax County memorandum to the Chairman and Members of the LBBCA
3. Application to appeal VUSBC, Part III (VMC), Section 302.7304.15, 304.2, and 304.7 from Mr. Parrish
4. Notice of Violation dated September 4, 2013, issued by Investigator Domin, Fairfax County Department of Code Compliance.
5. CD containing digital images taken by Investigator Domin depicting violations of the cited Virginia Maintenance Code.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-9346
www.fairfaxcounty.gov/code

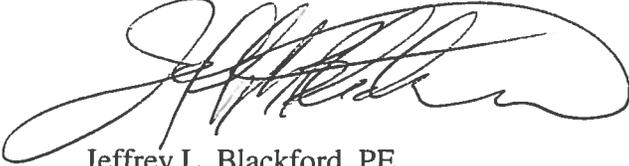
November 26, 2013

Mr. Alan McMahan, Senior Constuction Inspector II

Page 2

By copy of this letter, I hereby provide copies of all documents listed above to related parties.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey L. Blackford', with a large, sweeping flourish at the end.

Jeffrey L. Blackford, PE
Director, Department of Code Compliance
Virginia Maintenance Code Official

Attachments

cc: John A Parrish and Maria P. Tungol
Carla Moran, Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals





Proclamation

By the State Building Code Technical Review Board
In Recognition and Profound Appreciation of
Distinguished Service by

R. Schaefer Oglesby

Approved on June 20, 2014

Whereas, the Review Board is a duly established board to hear and decide upon appeals under the Virginia Uniform Statewide Building Code and other Building and Fire Regulations; and

Whereas, R. Schaefer Oglesby has served the Commonwealth of Virginia as a member of the Review Board; and has provided outstanding leadership and guidance to the Review Board; and

Whereas, R. Schaefer Oglesby faithfully, and with honor, integrity and great distinction served as a Member for nearly twenty years and as Vice-Chairman for over five years.

Now, therefore be it resolved that the Review Board formally acknowledges and extends its profound appreciation and gratitude to R. Schaefer Oglesby for his many years of service to the Review Board.

Be It Further Resolved that this proclamation is included in the minutes of the meeting and a copy presented to R. Schaefer Oglesby as a token of the Review Board's appreciation and sincere thanks.

Attest:

J. Robert Allen, Chairman

Vernon W. Hodge, Secretary