

**AGENDA**  
**STATE BUILDING CODE TECHNICAL REVIEW BOARD**  
**Friday, June 19, 2015 – 10:00 a.m.**  
**Virginia Housing Center 4224 Cox Road - Glen Allen, Virginia**

- I. Roll Call **(Tab 1)**
- II. Approval of March 20, 2015 Minutes **(Tab 2)**
- III. Public Comment
- IV. Approval of Final Order **(Tab 3)**  
In Re: Appeal of T. Chester Baker  
Appeal No. 14-8(B)
- V. Approval of Final Order **(Tab 4)**  
In Re: Appeal of T. Chester Baker  
Appeal No. 14-8(A)
- VI. Approval of Final Order **(Tab 5)**  
In Re: Appeal of Mary Ann Capp  
Appeal Nos. 14-1 and 14-10
- VII. Appeal Hearing **(Tab 6)**  
In Re: Appeal of The Islander, LLC **(For Consideration of Dismissal as Moot)**  
Appeal No. 13-4
- VIII. Appeal Hearing **(Tab 7)**  
In Re: Appeal of Leslie Carper **(As to Jurisdiction)**  
Appeal No. 15-7
- IX. Appeal Hearing **(Tab 8)**  
In Re: Appeal of Jonathan and Carolyn Clark  
Appeal No. 14-13
- X. Appeal Hearing **(Tab 9)**  
In Re: Appeal of Mark L. Riley  
Appeal No. 14-14
- XI. Appeal Hearing **(Tab 10)**  
In Re: Appeal of Edward J. Taborek  
Appeal No. 15-3
- XII. Interpretation Request - Town of Farmville **(Tab 11)**
- XIII. Interpretation Request - City of Lynchburg **(Tab 12)**
- XIV. Secretary's Report

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Updated April 6, 2015

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**\*Both formats**

# DRAFT MINUTES

## STATE BUILDING CODE TECHNICAL REVIEW BOARD

MEETING  
March 20, 2015

VIRGINIA HOUSING CENTER  
GLEN ALLEN, VIRGINIA

### Members Present

Mr. J. Robert Allen, Chairman  
Mr. James R. Dawson, Vice-Chairman  
Mr. Matthew Arnold  
Mr. W. Keith Brower, Jr.  
Mr. Vince Butler  
Mr. J. Daniel Crigler  
Mr. Joseph A. Kessler, III  
Ms. Joanne D. Monday  
Ms. Patricia S. O'Bannon  
Mr. W. Shaun Pharr

### Members Absent

Mr. John H. Epperson  
Mr. Alan D. Givens  
Mr. John A. Knepper, Jr.  
Mr. Eric Mays

### 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. The Chairman asked that a moment of silence be observed in remembrance of former Vice-Chairman Oglesby. Following the silence, Board members commented on Mr. Oglesby's character and that his membership on the Review Board would be missed.

### Roll Call

The attendance was established by the Secretary, Mr. Vernon W. Hodge. Mr. James M. Flaherty, Assistant Attorney General in the Office of the Attorney General, was present and serving as the Board's legal counsel. The Secretary recognized Mr. W. Shaun Pharr as a newly-appointed member of the Review Board and after providing a brief introduction, was welcomed by other Board members. The Secretary advised that Mr. Alan D. Givens, an additional newly-appointed member of the Review Board, was unable to attend due to a prior engagement but would attend future meetings.

### Approval of Minutes

After consideration, Mr. Crigler moved to approve the minutes of the November 21, 2014 meeting as presented in the agenda package. The motion was seconded by Ms. Monday and passed unanimously with Messrs. Brower and Pharr 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 Poplar Place Homeowners Association; Appeal No. 14-11:

Ms. Monday moved to approve the final order as presented in the agenda package. The motion was seconded by Mr. Butler and passed unanimously with Messrs. Brower and Pharr and Ms. O'Bannon abstaining from the vote.

Appeal of Gregory S. Mercer; Appeal No. 14-7:

Ms. Monday moved to approve the final order as presented in the agenda package. The motion was seconded by Mr. Crigler and passed unanimously with Messrs. Brower and Pharr and Ms. O'Bannon abstaining from the vote.

Mr. Kessler arrived at approximately 10:10 a.m.

New Business

Appeal of Mary Ann Capp; Appeal Nos. 14-1 and 14-10:

An appeal hearing convened with the Chairman serving as the presiding officer. The appeal concerned the construction of a private bridge on a contested right-of-way on Ms. Capp's property by Norman and Susan Gray, owners of property located at 2732 Sugar Grove Road in Christiansburg. Ms. Capp further appeals from decisions by the County of Montgomery Local Board of Building Code Appeals, which upheld decisions of the building official under Part I of the Virginia Uniform Statewide Building Code to issue the permit for, and approve, the bridge.

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

Mary Ann Capp  
William Yeager, building official for Montgomery County  
Norman Gray  
Julius Völgyi, witness for Ms. Capp

Also present were:

Tammy Belinsky, Esq., legal counsel for Ms. Capp  
Kendall Clay, Esq., legal counsel for Mr. Gray  
Ashley Rudolph, Esq., co-legal counsel for Mr. Gray

New Business

Appeal of Mary Ann Capp; Appeal Nos. 14-1 and 14-10 (continued):

Mr. Arnold arrived at approximately 10:30 a.m.

The following exhibit was submitted by Ms. Capp to supplement the documents in the agenda package:

Exhibit A – Report/Evaluation of the bridge by Mr. Völgyi.

The Chairman ruled the exhibit out-of-order since it was not submitted within the established timeframe and Mr. Völgyi was present to testify. Ms. Belinsky objected to the ruling.

After testimony concluded, the Chairman 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 – Appeal of Mary Ann Capp; Appeal Nos. 14-1 and 14-10:

After deliberation of Appeal No. 14-1, Mr. Dawson moved to uphold the decisions of the building official and local appeals board that the permit was appropriately issued. The motion was seconded by Mr. Kessler and a vote taken. The motion passed with a vote of five yeas to four nays.

After deliberation of Appeal No. 14-10, Mr. Kessler moved to uphold the decisions of the building official and local appeals board for the approval of the bridge. The motion was seconded by Mr. Crigler and a vote was taken. The motion failed with a vote of four yeas to five nays. Mr. Pharr then moved to overturn the approval of the bridge due to a lack of information to determine whether there was code compliance. The motion was seconded by Mr. Arnold and a vote taken. The motion passed with a vote of five yeas to four nays.

New Business

Appeal of T. Chester Baker; Appeal No. 14-8(B):

An appeal hearing convened with the Chairman serving as the presiding officer. The issue to be determined in the appeal was whether Baker filed a timely appeal to the City of Danville Local Board of Building Code Appeals from a demolition order issued by the City's code official under Part III of the Virginia Uniform Statewide Building Code for a building located at 1663 Piney Forest Road. The building was formerly part of an automobile auction complex.

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

T. Chester Baker, Jr.  
Jerry Rigney, code official for the City of Danville  
Jay Thornton, inspector for the City of Danville

Also present was:

Jeannise Galloway, Esq., legal counsel for the City of Danville

The following exhibit was submitted by the City of Danville, over the objection of Mr. Baker, to supplement the documents in the agenda package:

Exhibit A – March 3, 2014 email.

After testimony concluded, the Chairman 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.

New Business

Decision – Appeal of T. Chester Baker; Appeal No. 14-8(B):

After deliberation, Mr. Butler moved to dismiss the appeal due to not meeting the required filing time limit to the local appeals board. The motion was seconded by Mr. Crigler and passed unanimously.

Appeal of T. Chester Baker; Appeal No. 14-8(A):

An appeal hearing convened with the Chairman serving as the presiding officer. The appeal concerned a demolition order issued by the City of Danville under Part III of the Virginia Uniform Statewide Building Code for a building located at 1667 Piney Forest Road, owned by Mr. Baker, and last used as a video rental store.

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

T. Chester Baker, Jr.  
Jerry Rigney, code official for the City of Danville  
Jay Thornton, inspector for the City of Danville

Also present was:

Jeannise Galloway, Esq., legal counsel for the City of Danville

No exhibits were submitted to supplement the documents in the agenda package; however, Mr. Baker requested a continuance to provide additional documents. The Chairman ruled to deny the continuance request as the record appeared to be complete.

After testimony concluded, the Chairman 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.

New Business

Decision – Appeal of T. Chester Baker; Appeal No. 14-8(A):

After deliberation, Mr. Monday moved to uphold the issuance of the demolition order by the City code official, and its ratification by the local appeals board, due to the extensive damage to the building as documented in the engineer’s report submitted by the City. The motion was seconded by Ms. O’Bannon and passed unanimously.

Secretary’s Report

The Secretary reviewed updates to the Interpretation Booklet to correlate with the 2012 building and fire regulations of the Department. After consideration, Mr. Crigler moved to approve the booklet as presented. The motion was seconded by Mr. Brower and passed unanimously.

There was discussion of the Review Board’s continuance policy for appeals and whether to put a limit on the length of time parties could agree to a continuance. Mr. Pharr moved that if the continuation exceeded two years without resulting in the appeal being withdrawn, the appeal needed to be processed for a hearing. The motion was seconded by Mr. Crigler and passed unanimously.

Adjournment

There being no further business, the meeting was adjourned by motion of Mr. Crigler at approximately 4:00 p.m.

Approved: June 19, 2015

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Chairman, State Building Code Technical Review Board

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Secretary, State Building Code Technical Review Board

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of T. Chester Baker  
Appeal No. 14-8(B)

Hearing Date: March 20, 2015

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

T. Chester Baker (Baker), owner of property located at 1663 Piney Forest Road, in Danville, appeals to the Review Board from a decision by the City of Danville Local Board of Building Code Appeals (local appeals board), which dismissed Baker's appeal as

being untimely. The Review Board therefore considers only the timeliness issue.

In January of 2014, the Inspections Division of the City of Danville's Department of Community Development, in enforcing Part III of the Virginia Uniform Statewide Building Code, known as the Virginia Maintenance Code, issued a demolition order for a building owned by Baker at the above-referenced property. The order was mailed to Baker and posted on the building on the property. The City also published a Notice of Demolition for the building in a local newspaper in February of 2014.

Baker appealed the demolition order to the local appeals board in June of 2014, when filing an appeal for a similar situation on adjacent property. The local appeals board considered both of Baker's appeals in June of 2014, but limited their consideration of the demolition order for the 1663 Piney Forest Road building to only whether Baker's appeal was timely, and after consideration, dismissed the appeal as untimely since no application for appeal was filed by Baker within the 14-day timeframe required by the Virginia Maintenance Code.

### III. FINDINGS OF THE REVIEW BOARD

The testimony and evidence submitted verifies that Baker's appeal to the local board was not filed within the 14-day time limit required by the Virginia Maintenance Code. Accordingly, and

consistent with past rulings of the Review Board, Baker's appeal is invalid.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders Baker's appeal of the demolition order for the building at 1663 Piney Forest Road, to be, and hereby is, dismissed as untimely.

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Chairman, State Technical Review Board

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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 T. Chester Baker  
Appeal No. 14-8(A)

Hearing Date: March 20, 2015

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

T. Chester Baker (Baker), owner of an unoccupied building at 1667 Piney Forest Road, in Danville, appeals an order issued by the Inspections Division of the City of Danville's Department of Community Development in May of 2014, under Part III of the

Virginia Uniform Statewide Building Code, requiring the building to be demolished.

Baker first filed an appeal to the City of Danville Local Board of Building Code Appeals (local appeals board) after the demolition order issued by the City was posted on the property and a copy of the notice was published in local newspapers. The local appeals board conducted a hearing in June of 2014 and ruled to uphold the demolition order. Baker then further appealed to the Review Board.

Review Board staff conducted an informal fact-finding conference in early January of 2015, attended by Baker and representatives of the City. At the conference, City representatives advised that with Baker's permission, the City would engage a professional engineer to evaluate the building and submit a report to the Review Board to assist in determining whether the building needed to be demolished. Baker agreed to permit the City to engage the engineer.

The engineer's evaluation was submitted in late January of 2015 and a hearing before the Review Board was conducted in March of 2015 with Baker and representatives of the City attending.

### III. FINDINGS OF THE REVIEW BOARD

Part III of the Virginia Uniform Statewide Building Code, known as the Virginia Maintenance Code, addresses when a building

may be ordered by a local enforcing agency to be demolished, in § 105.1, which states in pertinent part as follows:

"... 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."

Further, an unsafe structure is defined in § 202 of the Virginia Maintenance Code as follows:

"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."

Based on the pictorial evidence submitted, the testimony of the City's representatives and the engineer's report, areas of the building's roof are rotten from years of roof leaks and are in danger of collapse. In addition, the columns supporting the roof extension over a walkway on one side of the building lack anchoring and given the deterioration of the roof framing, there is danger of a roof collapse affecting the safety of any persons outside of and in the immediate vicinity of the building.

Also, given the testimony from the City's representatives concerning the number of notices Baker has been issued for this building over the years and the lack of compliance with those notices and Baker's verbal and written testimony that his intent

is to demolish the building once the contents of the building are sold, the demolition order issued by the City is reasonable and appropriate.

#### IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the issuance of the demolition order for the building at 1667 Piney Forest Road by the Inspections Division of the City of Danville's Department of Community Development, and the local appeals board ratification of such demolition order, to be, and hereby is, upheld.

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Chairman, State Technical Review Board

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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 Mary Ann Capp  
Appeal Nos. 14-1 and 14-10

Hearing Date: March 20, 2015

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

Mary Ann Capp (Capp), the owner of property in Montgomery County, appeals decisions of William Yeager (Yeager), the County building official, under Part I of the Virginia Uniform Statewide Building Code, known as the Virginia Construction Code, or VCC.

A private road on Capp's property crosses a creek and serves as an access to several properties, one of which is owned by Norman and Susan Gray (Grays), at 3000 Sugar Grove Road, in Christiansburg.

There was a private road agreement between Capp and the Grays permitting the Grays to use that road to access their property. In early 2013, a flood washed out the culverts used to cross the creek. Subsequent to the flood, Capp rescinded the private road agreement. Court action between the Grays and Capp ensued and injunctive relief was granted to the Grays to restore access across the creek while the right to use the road was litigated.

In May of 2013, Susan Gray filed a building permit application to Yeager under the VCC to install new culverts across the creek. A building permit was issued. Capp filed an appeal of the issuance of the permit. Before an appeal hearing to the Montgomery County Local Board of Building Code Appeals (local board) could be scheduled, Susan Gray withdrew the permit application and Norman Gray filed a permit application, listing himself as the contractor, for a bridge to be constructed across the creek. A building permit was issued by Yeager using the same building permit number that had been assigned to Susan Gray's permit. Capp then appealed the issuance of Norman Gray's permit to the local board, which conducted a hearing in November

of 2013 and ruled to uphold Yeager's decision. Capp further appealed the local board's decision to the Review Board and Review Board staff designated the appeal to the Review Board as Appeal No. 14-1.

Prior to a hearing before the Review Board on Appeal No. 14-1, in January of 2014, based on a letter from an engineer issued in November of 2013, Yeager approved the bridge as complying with the VCC. Capp appealed Yeager's approval of the bridge to the local board.

A hearing was conducted in June of 2014 and the local board ruled to uphold Yeager's decision. Capp further appealed the local board's decision to the Review Board and Review Board staff designated the appeal to the Review Board as Appeal No. 14-10.

Review Board staff combined Capp's appeals and a hearing before the Review Board was conducted with Capp and Norman Gray and their respective legal counsel, and Yeager, in attendance.

### III. FINDINGS OF THE REVIEW BOARD

The issue before the Review Board in Appeal No. 14-1 is whether Yeager erred in issuing the permit for the bridge without adequate plans and specifications or in violation of Capp's due process or equal protection rights.

Private bridges, under the VCC, are classified as Group U (Utility) under § 312 of the VCC and § 312.1 states in pertinent part as follows:

“Buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy shall be constructed, equipped and maintained to conform to the requirements of this code commensurate with the fire and life hazard incidental to their occupancy.”

Section 109.1 of the VCC requires construction documents to be submitted with the application for a permit. However, the term “construction documents” is defined in Chapter 2 of the VCC as:

“Written, graphic and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of a project necessary for obtaining a building permit.”

In addition, § 109.6 of the VCC addresses the acceptance of construction documents after a permit has been issued as follows:

“109.6 Phased approval. The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of the building or structure shall proceed at the holder’s risk with the building operation and without assurance that a permit for the entire structure will be granted.”

The Review Board finds that the above provisions authorized Yeager to issue the permit for the bridge with the contingency stipulated in the May 30, 2013 correspondence from Yeager's office to Gray to require a professional engineer to perform a post-construction evaluation of the bridge for compliance with the VCC prior to final approval. Therefore, Yeager's decision to issue the permit for the bridge was authorized by the VCC.

The issue before the Review Board in Appeal No. 14-10 is whether Yeager erred in approving the bridge as complying with the VCC based on the professional engineer's post-construction evaluation.

The Review Board finds that Yeager should not have approved the bridge since design loads for the bridge were not adequately established. Section 312.1 of the VCC, as stated above, requires Group U structures to comply with the provisions of the code commensurate with the fire and life hazard. Chapter 16 of the VCC establishes structural requirements for buildings or structures. Section 1604.2 states in pertinent part:

"Loads and forces for occupancies or uses not covered in this chapter shall be subject to the approval of the building official."

Private bridge loads are not established in Chapter 16 of the VCC. Therefore, the VCC required Yeager to determine what loads the bridge would be subject to. Fire department apparatus access and anticipated truck, vehicle or farm equipment traffic

are examples of considerations. Adequate safety factors in the construction of the bridge for such loads would also need to be considered.

The Review Board further finds that the calculations and assessment provided by the professional engineer engaged by the Grays, and relied upon by Yeager in approving the bridge, did not address the actual construction materials used or provide any test results of the materials. Norman Gray testified at the hearing before the Review Board that the metal beams below the bridge deck were obtained from a salvage yard, and the evidence indicated that no concrete strength tests were performed during or after construction. In addition, the professional engineer's statement that "I feel that the construction materials and workmanship is more than adequate for the required usage[]" confirms that no tests or evaluations of the actual construction materials were performed.

Accordingly, Yeager's approval of the bridge was not justified and is contrary to the requirements of the VCC.

#### IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board (i) orders the decision of Yeager to issue the VCC permit for the bridge; and the local board's ruling to uphold that decision, to be, and hereby are,

upheld and (ii) orders the decision of Yeager to approve the bridge; and the local board's upholding of that decision, to be and hereby are, overturned.

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Chairman, State Technical Review Board

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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  
**(For Consideration of Dismissal as Moot)**

IN RE: Appeal of the Islander, LLC  
Appeal No. 13-4

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)  
(For Consideration of Dismissal as Moot)

IN RE: Appeal of the Islander, LLC  
Appeal No. 13-4

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1. The Islander, LLC, owner of the Islander Hotel and Restaurant, located at 27 Old Ferry Road in Mathews County, through its agent, Elizabeth Jenkins, questions whether the Mathew County building official's rescission of a notice of violation of Part III of the Uniform Statewide Building Code (the Virginia Maintenance Code) makes its appeal to the Review Board moot.

2. In May of 2013, following complaints, the Mathews County building official issued a notice of violation, citing violations of the Virginia Maintenance Code and noting that violations of the Virginia Statewide Fire Prevention Code were present, to the Islander, LLC, condemning the Islander Hotel and Restaurant. The order required fencing the property to assure that no one was occupying it.

3. In June of 2013, Ms. Jenkins, acting as an executor, filed an appeal of the notice to the Mathews County Board of Building Code Appeals, which heard the appeal and ruled to uphold the issuance of the notice.

4. Ms. Jenkins further appealed to the Review Board.

5. Some work was done at the property to secure it and an engineering report was submitted to the building official. In addition, an asbestos survey was conducted.

6. In March of 2014, the building official issued a revised order indicating that the May notice was rescinded, but listing conditions remaining in effect, including that no one was to occupy the building.

7. In April of 2014, the building official met with a consultant on site to address outstanding issues. At some point subsequent to the meeting, a concern was raised that Mathews County had not elected to enforce the Virginia Maintenance Code. Review Board staff checked the Department's records and there was no appointment letter for a building maintenance official. The County consulted with its legal counsel and received correspondence stating that it had properly elected to enforce the code.

8. In January of 2015, the building official issued a third letter rescinding both the May 2013 notice and the March 2014 notice. The only condition listed was that the property remain secure.

9. In February of 2015, Ms. Jenkins asked the building official to revise the January correspondence to reflect the correct dates of the prior notices and to clearly state that all prior notices were rescinded.

10. Review Board staff contacted the building official and verified that the January correspondence would not be revised. Ms. Jenkins was contacted to see if the appeal to the Review Board would be withdrawn based on the January correspondence from the building official, but the indication was that the correspondence was not clear enough to allow withdrawing the appeal.

11. Review Board staff scheduled a hearing for consideration of dismissal to determine whether the appeal is moot.

Suggested Issue for Resolution by the Review Board

1. Whether to dismiss the Islander, LLC appeal as moot.

# COMBINED DOCUMENTS



Mathews County Building Department

## Notice of Violation and Correction Order

To: The Islander LLC (9504 LYNDONWAY DRIVE, RICHMOND, VA 23229)

Date: 05-17-2013

'911 address or location: 27 Old Ferry Rd; The Islander Hotel & Restaurant

### Comments/Notes:

This notice is a follow up to a site visit that was made to the above listed property. This site visit was performed after receiving multiple complaints regarding the property (hotel & restaurant).

Prior to performing the inspection/site visit, the Virginia Department of Health was contacted and they have informed the Mathews County Building Department:

- The Islander does not have an active or valid hotel or restaurant permit.

During the inspection or site visit, multiple violations of the 2009 Virginia Maintenance Code and the 2009 Virginia Statewide Fire Prevention Code were observed.

The hotel and restaurant are in very poor condition due to storm damage and lack of maintenance. Multiple fire, health and safety issues and concerns were observed, along with unsanitary conditions.

A certificate of occupancy for the hotel and restaurant has not been located in the Mathews County Building Department. If a certificate of occupancy is located or does exist; it is hereby revoked.

Per section 105 of the 2009 Virginia Maintenance Code, both the hotel and restaurant are deemed UNSAFE STRUCTURES and STRUCTURES UNFIT FOR HUMAN OCCUPANCY. Both the hotel and restaurant are hereby condemned.

No one is to enter either building without the approval of the Mathews County Building Department. No one is to rent/lease/occupy or stay in either building.

Per the Uniform Statewide Building Code and State Law, it is unlawful to occupy a building without a certificate of occupancy or to occupy a building that has been condemned (unsafe structure/structure unfit for human occupancy).

As the owner of The Islander, you are responsible to ensure no one enters either building (hotel or restaurant) or the pool area.

You shall ensure no unauthorized entry to the hotel, restaurant or pool area is possible by employing or using approved boarding, fencing or other approved protection measures.

You have 30 days to board up, fence off or use other approved/appropriate measures to prevent anyone from entering or occupying the hotel, restaurant or pool area.

As of this date, the hotel and restaurant are condemned and no one is permitting in the hotel, restaurant or pool area.

### **Important Information**

Each violation of the State Building Code (USBC) is a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than \$2,500 (for each violation). In addition, each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense.

You may have the right to appeal this Notice of Violation under section 119 of the USBC or section 106 of the Virginia Maintenance Code.

*Jamie R Wilks*

Mathews County Building Official

Phone: 804-725-7171

Email: [jwilks@co.mathews.va.us](mailto:jwilks@co.mathews.va.us)

Mathews County Building Department  
Inspection Notes

Date: 05-13-2013

Permit number: n/a-complain/concern inspection

911 address or location: 27 Old Ferry Rd, Gwynn's Island VA

Re: The Islander Hotel & Restaurant

Comments & Notes

I received a request from one of the owners of the Islander Hotel-Restaurant. He was concerned about the condition of the hotel (health and fire safety concerns). He requested I visit the site and make an assessment as to the condition of the property/hotel. He was also concerned people may be staying in the hotel and he does not feel it is safe, and does not think anyone should be staying/living in the hotel. The Islander does not have an active/valid hotel or Restaurant permit through VDH.

I made a site visit this date; the following are some of the issues or concerns that were observed:

- Overall, the hotel & restaurant are in poor condition due to lack of maintenance
- The hotel appears to have suffered damage from one or more hurricanes/storm events
- The structure appears vacant, but multiple areas are not secured (entry is possible)
- The roof appears to be in poor condition and appears to be leaking (moisture intrusion into the structure)
- The exterior of the building (building envelope) is in poor condition; moisture intrusion and leaking into the structure was observed
- The hotel pool is in very poor condition and failing. The pool is also partially filled with water (runoff/accumulation) and is unsanitary. The pool does not have a barrier to keep people out (safety concern)
- Missing steps, unsafe walking surfaces and missing walkways were observed (safety hazards); some walkways have collapsed and are unstable
- At numerous points structural concrete is failing/spalling/etc; exposed reinforcements is visible (corrosion & rust was observed on the reinforcement)
- The second floor concrete balcony is damaged or failing and does not appear to be structurally sound (cracks in the concrete , exposed reinforcement and moisture intrusion were observed)
- Multiple signs of mold and-or microbial growth were observed on both the exterior and the interior of the structure (health concern). This mold/microbial

growth is due to moisture intrusion/leaking which will also lead (is causing) damage to the structure itself

- At multiple locations structural damage/decay was observed
- Unsafe electrical equipment was observed (multiple locations)
- No operable mechanical or HVAC system was visible
- No operable fire/smoke alarms were visible. In addition no exit signs were visible; egress paths were not labeled (some egress paths are blocked or obstructed) – fire safety hazards
- One unsecured room was inspected: mold/microbial growth was observed; unsanitary conditions were observed
- The sewage treatment system was viewed from a distance, and appears to be lacking maintenance (the site is overgrown and unknown if proper preventative maintenance has been performed)

The above conditions are a summary of the overall condition of the hotel & restaurant. The hotel and restaurant are in very poor condition and are to be condemned.

The Islander is both UNSAFE and UNFIT FOR HUMAN HABITATION.

Multiple fires, health and safety issues and concerns were observed, along with unsanitary conditions.

No certificate of occupancy for the hotel or restaurant has been located in the Mathews County Building Department. If a certificate of occupancy is located or does exist, it is hereby revoked.

Per section 105 of the 2009 Virginia Maintenance Code:

Both structures are to be condemned and entry is prohibited (no one is permitted in the structures without the permission of the Mathews County Building Department).

The owners are to be formally notified and the building is to be posted (no entry).

The owners will also be required to properly secure both buildings and the pool area to prevent an unauthorized entry (safety concern).

June 13, 2013

Mathews County Building Department  
Via email: jwilks@co.mathews.va.us  
Hand Delivered: 6/14/13

Re: The Islander LLC

Dear Mr. Wilks:

Let this letter serve as notice and our request that we wish to appeal the Notice of Violation and Correction Order dated 5/17/13 in regards to the above referenced property. We look forward to working with you in regards to the matter. Please get with Debbie Jenkins Gibson in regards to setting up a date for a hearing.

With Regards,



Elizabeth Jenkins, Executor  
The Islander LLC

Mathews County  
Board of Building Codes Appeal  
P.O. Box 839  
Mathews, Virginia 23109

To: The Islander LLC  
17871 Vontay Road, Rockville, VA 23146

Cc: Mathews County Building Department

An appeal was held before the Mathews County Board of Building Codes appeal on June 28<sup>th</sup>, 2013.

The Board voted 4-0 to up hold the Notice of Violation and correction order issued on May 17<sup>th</sup>, 2013 by the Mathews County Building Department.



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
Technical Assistance Services Office (TASO) 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: TASO@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):

The Iskender LLC, 17871 Vantay Rd, Rockville, Va. 23146  
804-690-1663 or PAWSTENN96@gmail.com

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

Mathews Co. Bldg. Official, Jamie R. Wilks 804-725-7171  
jwilks@co.mathews.va.us

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 18<sup>th</sup> day of July, 2013, 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: X Elizabeth G. Jenkins

Name of Applicant: Elizabeth G. Jenkins  
(please print or type)



Mathews County Building Department

## Notice of Violation and Correction Order

To: The Islander LLC, PO Box 424, Rockville VA 23146

Date: 09-12-2013

911 address or location: The Islander Hotel & Restaurant, 27 Old Ferry Rd

Permit number: none

### **Comments/Notes:**

This notice is a follow up to a site visit that was made to the above listed property, after receiving multiple complaints that work was being performed without permits.

At that time, I notice demolition, construction and renovations to The Islander Hotel & Restaurant.

No building permits have been issued; and no construction documents or plans have been submitted to the Building Department.

In addition, the required asbestos inspection has not been performed.

The Islander Hotel & Restaurant are condemned; no one is permitted in either building.

Both buildings have been deemed Unsafe Structures and Structures Unfit for Human Occupancy.

The following violations of the Virginia State Building Code (USBC) were observed:

1. Section 108 Application for a permit has not been received
2. Section 109 Construction Documents have not been provided to the Building Department
3. Section 110 a valid building permit has not been issued
4. Section 110.3 the required asbestos inspection has not been performed (and the asbestos inspection report has not been received by the building department).

**All work is to stop**, until the following conditions are satisfied:

1. A Zoning Permit from the Mathews Zoning Department is obtained (if required)
2. Construction documents and-or plans are submitted to the Building Department for review and approval.
3. The required permits are issued.

4. The required asbestos inspection is performed and the report is provided to the Mathews Building Department.
5. Any required inspections are performed.

**Important Information**

Each violation of the State Building Code (USBC) is a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than \$2,500 (for each violation). In addition, each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense.

You may have the right to appeal this Notice of Violation under section 119 of the USBC.

*Jamie R Wilks*

Mathews County Building Official  
Phone: 804-725-7171  
Email: [jwilks@co.mathews.va.us](mailto:jwilks@co.mathews.va.us)

**Note:**

A copy of this Notice of Violation & Correction Order is also being sent to the State Building Code Technical Review Board (in reference to the pending appeal).  
A copy of this NOV will also be posted on the property, along with a stop work order.



Mathews County Building Department

## Notice and Revised Order

To: The Islander LLC

Date: 03-28-2014

911 address or location: 27 Old Ferry Rd., Mathews County, VA

### **Comments/Notes:**

This notice is a follow up to a site visit that was made to the above listed property; and is in reference to a Notice of Violation dated 05-17-2013.

This NOV was issued to The Islander LLC regarding the Islander Motel and Restaurant.

During this most recent site visit (conducted on this date) it appears no one is living in or occupying the Motel or Restaurant.

It also appears the Motel and Restaurant have been boarded up and access has been secured to prevent anyone from entering or occupying these buildings.

The conditions regarding this Notice of Violation (dated 05-17-2013) appear to have been satisfied; therefore the Notice of Violation is being lifted or rescinded. As part of the lifting or rescinding of the Notice of Violation, the following conditions or stipulations shall still remain in effect:

- No occupancy is permitted in the Motel, Restaurant or pool area.
- The Motel, Restaurant and pool area are still deemed unfit for human occupancy  
THESE STRCUTURES ARE UNFIT FOR HABITATION AND THEIR USE OR OCCUPANCY IS PROHIBITED BY THE CODE OFFICIAL.
- The Motel, Restaurant and pool area must remain boarded up and entry to the area secured to prevent anyone from entering the buildings or area.
- Currently an active or valid building permit (130609B) for roof repairs exists; the contractors making the repairs are permitted to continue with their work.
- If or when renovations and rehabilitation are performed: all required permits must be obtained; construction documents must be submitted; and all required inspections must be performed.
- If renovations and rehabilitation are performed and completed, a new Certificate of Occupancy will be issued and then occupancy will be permitted.

As part of any renovation or rehabilitation project, the following are some of the agencies and-or permits that will be required:

Mathews County Zoning Department

Zoning Permit

Mathews County Building Department

Building Permits

Virginia Department of Health (VDH):

Restaurant Operational Permit

Motel Operational Permit

Operational Permit for drinking water (waterworks permit)

Operational Permit for Sewage Disposal

Note: this property is located in a Special Flood Hazard Zone (VE-10), therefore any and all work must comply with the Mathews County Floodplain Management Ordinance and all FEMA-NFIP regulations.

**Important Information**

Each violation of the State Building Code (USBC) is a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than \$2,500 (for each violation). In addition, each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense.

*Jamie R Wilks* CBO

Mathews County Building Official

Phone: 804-725-7171

Email: [jwilks@co.mathews.va.us](mailto:jwilks@co.mathews.va.us)



Mathews County Building Department

17 Court St. Mathews VA 23109

Phone: (804) 725-7171 Website: [www.co.mathews.va.us](http://www.co.mathews.va.us)

To: The Islander LLC (P.O. BOX 424, ROCKVILLE, VA 23146)

Cc: State of Virginia DHCD

Date: 01-15-2015

Re: NOV and Revised Notice issued to The Islander LLC (27 Old Ferry Rd)

Due to the apparent compliance with the previously issued Notice of Violation (dated 05-07-2013) and the Revised Notice (dated 03-28-2014);

**THESE TWO NOTICES ARE HEREBY RESCINDED OR WITHDRAWN.**

From all indications no one appears to be using or occupying the Islander Motel or Restaurant at this time; thereby ensuring the health, safety and welfare of the public.

Since The Islander LLC does not have a valid permit from the Virginia Department of Health to operate a Motel or Restaurant (and both buildings have been vacant and closed down for years) it is the expectation of the County of Mathews, no one will be using or occupying the Motel or Restaurant (and access to the property will remain secure).

If or when The Islander LLC decides to renovation, rehabilitate and re-open the motel and-or the restaurant, all required regulatory steps must be met and accomplished. This includes, but may not be limited to: the Virginia Department of Health (operational permits for sewage disposal, water supply, restaurant and motel); the Mathews County Zoning Department; the Mathews County Building Department (construction documents, plans, permits, etc); the Mathews County Floodplain Management Ordinance; and all FEMA-NFIP regulations.

If the County of Mathews receives additional complaints or concerns regarding any of the buildings in this complex, the County will be forced to take action to protect the health, safety and welfare of the public.

*Jamie R Wilks* CBO

Mathews County Building Official

Phone: 804-725-7171

Email: [jwilks@co.mathews.va.us](mailto:jwilks@co.mathews.va.us)

## McMahan, Alan (DHCD)

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**From:** Paws Inn [pawsinn96@gmail.com]  
**Sent:** Saturday, February 07, 2015 11:32 AM  
**To:** Jamie Wilks; McMahan, Alan (DHCD)  
**Subject:** Islander Notices of Violation Dated 5-17-13 and 3-28-14

Dear Mr. Wilks:

We ask that your rescission/withdrawal notice/letter dated 1-15-15 be revised and cover the following requests so that we can move forward with a clean slate.

1. That the correct dates of the notices be included in the notice/letter.
2. That the notice/letter state "any and all prior notices of violation/determinations in regards to this property are hereby rescinded/withdrawn as of the date of 1-15-15". This would cover the error in the dates of the notices and moving forward you can certainly issue new orders if needed.
3. That the notice/letter be concise and include the wordage in item 2 and not include any other statements that would be open for interpretation or be considered to be a re-statement of a prior notice/determination for which may be a part of our appeal.

Going forward, whatever permits required for what we may have in mind for this site, we will obtain from the appropriate departments. We will continue to have Dave Duffy on board to give us direction. (You met him last April on site to discuss unsuccessfully, a resolution to the project/notices. To refresh things, he is the former head of the Building Department of Goochland County and has over 30 years experience in the field and with large commercial projects and will be a great help to both of us.) The property is secure and does have insurance in place.

With Regards,

Debbie Gibson



Mathews County Building Department

17 Court St. Mathews VA 23109

Phone: (804) 725-7171 Website: www.co.mathews.va.us

To: Alan McMahan, C.B.O., CLGM

Date: 05-29-2015

Re: The Islander LLC appeal

I am sending this letter at the request of DHCD staff in response to the following appeal:

No. 13-4

The original Notice of Violation was issued on 05-17-2013

A Revised Notice was issued on 03-28-2014

On 01-15-2015 a letter was sent withdrawing or rescinding both the original Notice of Violation and the Revised Notice.

Both were rescinded or withdrawn since compliance was obtained and the intention of Mathews County was obtained; to protect the health, safety and welfare of the public.

*Per Section 119.5 (Right of appeal; filing of appeal application) of the 2009 Virginia USBC:  
Any person aggrieved by the local building department's application of the USBC or the refusal by to grant a modification to the provisions of the USBC may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 30 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 building 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 building official's decision.*

Since no active violations or notices are in place, it is the opinion of the Mathews Building Department the requested appeal should be dismissed.

There is nothing to appeal and no one is 'aggrieved by the local building department's application of the USBC'.

*Jamie R Wilks* CBO, CFM

Mathews County Building Official

& Floodplain Administrator

Phone: 804-725-7171

Email: jwilks@co.mathews.va.us

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD  
**(As to Jurisdiction)**

IN RE: Appeal of Leslie Carper  
Appeal No. 15-7

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)  
(As to Jurisdiction)

IN RE: Appeal of Leslie Carper  
Appeal No. 15-7

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1. Leslie Carper (Carper), registered agent of Mycondo2rent, LLC, seeks relief from a bill for repairs to a sliding glass door in Unit D (8626 Beekman Place) of The Clusters at Woodlawn, a condominium in Fairfax County.

2. In February of 2014, the Fairfax County Department of Code Compliance issued a notice of violation under Part III of the Virginia Uniform Statewide Building Code, known as the Virginia Maintenance Code, for the sliding glass door to the balcony not being tightly fitting and secure and for deterioration of the floor on the interior side of the sliding glass door.

3. Carper appealed the notice of violation to the Fairfax County Board of Building Code Appeals (local board) and a hearing was held in May of 2014. The local board ruled to uphold the issuance of the citation for the sliding glass door, but overturned the issuance of the citation for the floor on the interior side of the sliding glass door since that element was part of the common area of the condominium and not Carper's responsibility.

4. The County Department of Code Compliance appealed the local board's decision to the Review Board. Review Board staff assigned appeal number 14-5 to the County's appeal.

5. In July and August of 2014, correspondence was received by Review Board staff indicating that repairs were being made to remedy the cited violations. Carper and the County Department of Code Compliance agreed to continue the appeal in anticipation that the appeal would be withdrawn by the County after the violations were corrected.

6. In November of 2014, the County determined that the violations had been corrected and withdrew its appeal. Review Board staff notified the County and Carper by email.

7. In May of 2015, Carper contacted Review Board staff asking that it move the County's appeal forward. Carper was informed by Review Board staff that the appeal had been withdrawn, but that if there was a dispute concerning the repairs that Carper could ask the County to perform an inspection and appeal any new decision concerning whether the violations were abated to the local board. Carper responded that the correspondence concerning the continuing of the County's appeal while repairs were being made indicated that either the County or Carper could end the continuance of the appeal and ask that it be processed for a hearing by the Review Board.

8. Review Board staff informed Carper that the continuance language was only for active appeals and that no action could be taken on an withdrawn appeal. A copy of the correspondence informing Carper that the County's appeal had been withdrawn was provided to Carper. Carper acknowledged that the County's appeal had been withdrawn but stated that she never received the correspondence. In addition, Carper filed an appeal application to the Review Board in her name.

9. Review Board staff assigned appeal number 15-7 to Carper's appeal and advised Carper that a hearing before the Review Board would be scheduled to determine whether jurisdiction existed since there was no decision by a local board to appeal to the Review Board within the required 21 day timeframe and since the County's appeal had been withdrawn.

10. This staff document was drafted and distributed to Carper, the County Department of Code Compliance and to legal counsel for the condominium association and opportunity given to submit written arguments or additional documents.

Suggested Issue for Resolution by the Review Board

1. Whether the Review Board has jurisdiction to hear Carper's appeal.

# 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:** February 5, 2014

**METHOD OF SERVICE:** CERTIFIED MAIL # 7012 0470 0001 4644 1292

**LEGAL NOTICE ISSUED TO:** Mycondo2rent, LLC  
Registered Agent, Leslie Carper

**ADDRESS:** 8626 Beekman Place, Unit D  
Alexandria, Virginia 22309-1669

**LOCATION OF VIOLATION:** 8626 Beekman Place, Unit D  
Alexandria, Virginia 22309-1669

**TAX MAP REF:** 100-4 ((10)) 26D

**CASE #:** 201400028 **SR #:** 101432

### POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

CODE § 61-7-1(B):	Maintenance Code Violations	First Offense	Each Subsequent Offense
	§VMC304.15	\$ 100.00	\$ 150.00
	§VMC305.3	\$ 100.00	\$ 150.00
	§VMC305.4	\$ 100.00	\$ 150.00
<b>TOTAL:</b>		<b>\$ 300.00</b>	<b>\$ 450.00</b>

Dear Responsible Party:

The purpose of this letter is to rescind the Notice of Violation issued to Mycondo2rent, LLC, Registered Agent, Leslie Carper by letter, dated January 16, 2014, and to reissue a new Notice of Violation to Mycondo2rent, LLC, Registered Agent, Leslie Carper, the property owners, regarding the violations of the Virginia Maintenance Code.

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code-2009 Edition), an inspection on January 14, 2014 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.

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](http://www.fairfaxcounty.gov/code)

Mycondo2rent LLC  
Registered Agent, Leslie Carper  
February 5, 2014  
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**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:** Exterior sliding glass door to deck.

**Comments:** Repair or replace sliding glass door to ensure a tight fitting and secure door.

**Violation: INTERIOR SURFACES VMC 305.3.**

All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

**Location:** Interior sub-floor and the fire retardant light weight concrete covering the deteriorated plywood sub-floor to the right of the fire place and in front of the sliding glass door.

**Comments:** Remove one inch thick fire retardant light weight concrete over deteriorated plywood sub-floor that is cracked, replace deteriorated plywood sub-floor with new plywood, and replace one inch thick fire retardant light weight concrete covering the new plywood sub-floor.

**Violation: STAIRS AND WALKING SURFACES VMC 305.4.**

Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

**Location:** Interior sub-floor and the fire retardant light weight concrete covering the deteriorated plywood sub-floor to the right of the fire place and in front of the sliding glass door.

**Comments** Remove one inch thick fire retardant light weight concrete over deteriorated plywood sub-floor that is cracked, replace deteriorated plywood sub-floor with new plywood, and replace one inch thick fire retardant light weight concrete covering the new plywood sub-floor.

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

Mycondo2rent LLC  
Registered Agent, Leslie Carper  
February 5, 2014  
SR 101432  
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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, Virginia 22035-5504  
Phone: (703) 324-1780

Information and forms can also be obtained at:  
[http://www.fairfaxcounty.gov/dpwes/publications/codemods\\_appeals.htm](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) 324-1458. For any other questions, contact our main office at (703) 324-1300.

LEGAL NOTICE ISSUED BY:



Signature

Mycondo2rent LLC  
Registered Agent, Leslie Carper  
February 5, 2014  
SR 101432  
Page 4

William A. Smoot  
Code Compliance Investigator II

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

Date: 2/10/2014

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

The subject of this appeal is located at:

8626D Beekman Place, Alexandria, VA 22309 1004 10 0026D  
Street Address Tax Map No.

Subdivision Clusters at Woodlawn Condominium Section No. NA Lot No. NA

As the building  owner  owner's agent, I am hereby appealing the decision of the Fairfax County Code Official noted above whereby it was determined that: (describe the decision; a copy of the decision must be attached)

The homeowner is responsible for repairing damages to the Common Elements caused by the condominium association's failure to maintain the Common Elements.

The decision of the Code Official was rendered on: 1/16 & 2/5/2014, Sheriff del 1/21 & 2/5/2014  
date

The Code Official's decision was based on the following code and section(s):

61-7-1(B) 2009 VMC304.4,305.1,305.2,305.3,305.4,304.15  
Code Name Edition (year) Section(s)

This appeal is being filed for the following reason or reasons:

The Fairfax County Department of Code Compliance Notice of Violation is in violation of 55-79.79 and 18.2-137. See attached.

The following points are relevant:

See attached

Owner's Name: Mycondo2rent, LLC Submitter's Name: Leslie Carper  
Signature: \_\_\_\_\_ Signature: \_\_\_\_\_  
Address: See above Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_ City, State, Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Telephone: lezcarp@gmail.com

## 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

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. 140206.0AP

In RE: Leslie Carper, Registered Agent

Mycondo2rent LLC

8626 Beckman Place, Unit D

Alexandria, VA 22309-1669

v.

The Board in a vote of 4-0 decided to grant the portion of the appeal with respect to the floor repairs, VMC 305.3 and VMC 305.4. The floors are common elements.

And, letter from Jane Saindon Rodgers of Whiteford, Taylor & Preston L.L.P., who represents the Unit Owners Association, states that the Association will be making the floor repairs as well as repairs around the chimney enclosure.

In the same vote the Board denied the portion of the appeal with respect to the sliding glass door, VMC 304.15. The sliding glass door is not part of the common elements, and the appellant is responsible for repairing or replacing the sliding glass door.

**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: \_\_\_\_\_

5/19/2014

Signature: \_\_\_\_\_



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.

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

**APPLICATION FOR 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):

Fairfax County Department of Code Compliance  
attn: Elizabeth Perry, Code Official  
12055 Government Center Parkway, Suite 1016  
Fairfax, VA 22035  
phone: 703-324-1377  
email: elizabeth.perry@fairfaxcounty.gov

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

Mycondo2rent LLC  
Leslie Carper, Registered Agent  
subject address: 8626 Beekman Place Unit D (listed as 8626 Beckman Place, Unit D in the LBBCA resolution)  
Alexandria, VA 22309  
opposing party mailing address: not provided  
opposing party phone number: not provided  
opposing party email: lezcarp@gmail.com

Additional Information (to be submitted with this application)

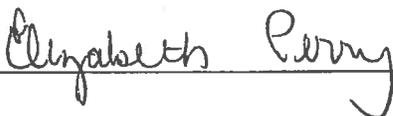
- Copy of enforcement decision being appealed
- Copy of record and decision of local government appeals board (if applicable and available)
- Statement of specific relief sought

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of June , 2014, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

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

Signature of Applicant: \_\_\_\_\_



Name of Applicant: Elizabeth Perry  
(please print or type)

Code official

Fairfax County Department of Code Compliance

## Statement of Relief Sought

The Fairfax County Department of Code Compliance is appealing the May 14, 2014 decision of the LBBCA on the following grounds:

- The LBBCA should refrain from apportioning liability for the VMC violations among responsible parties, especially when no direct evidence is offered on that subject, because all responsible parties will be required to engage in abatement efforts in order to come into compliance with the VMC. Offering relief to some of the responsible parties reduces the County's ability to ensure compliance with the VMC.
- The LBBCA should only consider credible testimony from parties that are properly before the LBBCA. The LBBCA relied on a letter from a representative from the Unit Owners Association (Association) to the appealing party (MyCondo2Rent, LLC) describing the work the Association may undertake (qualified by a reservation of rights as to any corrective work it deems to be the responsibility of the unit owner) to address the violation. The letter did not accept responsibility by the Association and the Association was not represented at the appeal hearing.
- Furthermore, the appealing party (MyCondo2Rent, LLC) failed to appear before the LBBCA to prosecute its appeal. The LLC merely corresponded through its Registered Agent.
- In the deliberations, the LBBCA referred to the potential for the responsible parties to be subject to civil penalties in the consideration of identifying which parties were responsible for the violations. The LBBCA should refrain from making decisions regarding the existence of VMC violations based on the potential imposition of civil penalties for failure to abate said violations.

**From:** [McMahan, Alan \(DHCD\)](#)  
**To:** [Perry, Elizabeth](#)  
**Cc:** [Hodge, Vernon \(DHCD\)](#); [Lez](#)  
**Subject:** RE: Fairfax County appeal to the Review Board (Appeal No. 14-5)  
**Date:** Monday, November 24, 2014 3:26:00 PM

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Elizabeth,

All you need to do is exactly what you've done. By copy of this email, I am notifying Ms. Leslie Carper of your decision.

Should you have any questions regarding the matter, please let me know.

Regards,

**Alan**

Alan McMahan, C.B.O., CLGM  
*Senior Construction Inspector II and  
Staff - State Building Code Technical Review Board  
Department of Housing & Community Development  
Division of Building & Fire Regulation  
State Building Code Office  
600 East Main Street, Suite 300  
Richmond, Virginia 23219  
(804) 371-7175  
(804) 371-7092 - fax  
[alan.mcmahan@dhcd.virginia.gov](mailto:alan.mcmahan@dhcd.virginia.gov)  
Code Connection Blog <http://dhcdcodeconnection.wordpress.com>  
Click and "follow" our Blog*

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**From:** Perry, Elizabeth [<mailto:Elizabeth.Perry@fairfaxcounty.gov>]  
**Sent:** Monday, November 24, 2014 2:39 PM  
**To:** McMahan, Alan (DHCD)  
**Subject:** RE: Fairfax County appeal to the Review Board (Appeal No. 14-5)

Alan,

The Department of Code Compliance case at issue in the subject appeal is closed and I would like to withdraw the appeal.

Please let me know what additional information you may need from me in order to withdraw the appeal.

Thank you,

Elizabeth

Elizabeth Perry

## McMahan, Alan (DHCD)

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**From:** Lez [lezcarp@gmail.com]  
**Sent:** Tuesday, May 05, 2015 11:43 AM  
**To:** McMahan, Alan (DHCD)  
**Attachments:** SBCTRBappealappform.doc; SBCTRBappealappdone.doc; DCCNotceVioltn2.14.14.pdf; BBCArslutn5.19.14.pdf

Dear Mr. McMahan:

With this letter, I wish to continue the Fairfax County Board of Building Code Appeals (BBCA) to the State Building Code Technical Review Board (SBCTRB), Appeal No. 14-5, which you offered to postpone on July 30, 2014 pending completion of repair work and Fairfax County DCC inspection, and did postpone on August 1, 2014 absent a deadline or close date; neither the Virginia Construction Code nor Virginia Maintenance Code impose a statute of limitations.

Please be advised that I complied with the May 19, 2014 BBCA resolution for the following reasons: (1) I was willing to pay \$350.00 (materials and labor) per two estimates to replace the sliding glass door which I obtained in October 2013 (see attached) and repeatedly emailed The Unit Owners Association of The Clusters at Woodlawn, A Condominium, Board of Directors (Assn) and Community Management Corporation (CMC) to learn when its structural repair work would be completed so I could do so; (2) In November 2013, I relocated 550 miles away and was unable to attend a hearing in Richmond; (3) I was reluctant to waste taxpayer dollars on additional appeals when the Assn and CMC had demonstrated by their correspondence and actions that they accepted full responsibility, including but not limited to, financial responsibility, for all repair and replacement.

At no time did I request, was informed of, or enter into an agreement with any parties to replace the door; at no time did the Assn or CMC provide their engineer's report, choice of contractors or doors, intention to invoice me, or consult with me in any way re: the door. At no time did they inform or schedule with me when their repairs would be completed so I could proceed with the door replacement, in violation of § 59.1. On the contrary, they consistently refused to schedule replacement with me despite my repeated email requests, and instead repeatedly informed me that they had contracted and were overseeing all aspects of replacing the door, which reflected their acceptance of full responsibility, including financial responsibility, for it. Therefore, §11-1, 11-2.2, and 11-4 control.

My understanding that they had accepted full responsibility, including financial responsibility, to replace the door was reinforced when I never received a bill, invoice, or any financial information of any kind from the Assn or CMC—until March 13, 2015, eleven months after they received an April 17, 2014 invoice (see attached)—when CMC learned of my intention to sell the unit (on February 2, 2015), at which time they attempted intimidation by dispatching notices threatening to put a lien on the unit in 61 days if the excessive and unsubstantiated \$1880.00 invoice (and fees) was not paid.

The Assn's and CMC's unlawful actions leave me no choice but to continue Appeals No. 14-5. Please see the attached Application for Administrative Appeal (and faxed today with signature) and Statement of Specific Relief Sought. Please inform me if you require additional documents and they will be forthcoming. Thank you.

Sincerely,  
Leslie Carper

Enclosures

Cc: Elizabeth Perry  
Gloria J. Derobertis, *et al*  
Gita Lainez  
John J. Carona

**From:** [Lez](#)  
**To:** [Hodge, Vernon \(DHCD\)](#)  
**Subject:** Re: Appeal to the Review Board  
**Date:** Friday, May 08, 2015 11:28:40 AM

---

Dear Mr. Hodge and Mr. McMahan:

Thank you for considering my appeal application (Appeal No. 15-7) in a preliminary hearing on June 19, 2015. I filed it because information pertaining to the LBBCA's decision came to light after Ms. Perry withdrew her appeal on November 24, 2014.

I do not dispute that Mr. McMahan emailed Ms. Perry's withdrawal of her appeal, but I did not receive it. Further, as someone completely unfamiliar with the LBBCA and SBCTRB processes, I relied on Mr. McMahan's July 30, 2014 written statement, "Also, if both parties agree to a postponement now, either party can subsequently contact Review Board staff should they wish to move forward on an appeal," which omitted any deadline or statute of limitations.

I look forward to hearing from you after June 19. Thank you.

Sincerely,  
Leslie Carper

On Wed, May 6, 2015 at 4:05 PM, Hodge, Vernon (DHCD)  
<[Vernon.Hodge@dhcd.virginia.gov](mailto:Vernon.Hodge@dhcd.virginia.gov)> wrote:

Ms. Carper:

I am the Secretary to the Review Board. Mr. McMahan asked me to respond to your email below and address the new appeal application that you filed with the Review Board.

In your email below you state that you were not informed that Fairfax County withdrew their appeal to the Review Board (that we had designated as Appeal No. 14-5). That is not true. Attached is email correspondence from Mr. McMahan acknowledging the withdrawal of the appeal by the County and you were copied in that email.

Irrespective of whether you were notified that the County had withdrawn the appeal, we cannot move an appeal forward to the Review Board that has been withdrawn by the appealing party, as there is no appeal to move forward.

You have, however, filed an appeal application to the Review Board yourself, dated May 5, 2015 (that we have designated as Appeal No. 15-7). Unless withdrawn, we will have to address that application. The Review Board's charge is limited to hearing appeals of the application of the code by an local enforcing agency after a local appeals board has heard an appeal. There has been no decision by the Fairfax County Board of Building Code Appeals concerning the property

in question within 21 days prior to you filing your application for appeal to the Review Board. Therefore, there is a question of whether the Review Board has jurisdiction to hear your appeal.

We will schedule a preliminary hearing for this matter at the Review Board's June 19, 2015 meeting. The Review Board will then decide whether you have a valid appeal. In the next week or so, Review Board staff will draft a summary of your appeal and send it to you and Ms. Perry. You will then be given an opportunity to respond to the summary and submit written arguments and any documents you believe the Review Board needs to have to address this situation.

I will add from a practical standpoint that even if the County had not withdrawn the appeal and it was heard by the Review Board, the Review Board's authority would have been limited to only whether to uphold or overturn the County's original decision to cite you for the violations instead of the condominium association. The Review Board would have no authority to address the dispute concerning who is responsible for payment for the repairs.

Information concerning the timeline for submissions will accompany the staff summary.

Should you have questions, please feel free to contact me at any time.

Vernon Hodge, CBO, Technical & Code Development Specialist and Secretary, State Technical Review Board

State Building Codes Office

Division of Building and Fire Regulation

Va. Department of Housing and Community Development

Direct Dial: [\(804\) 371-7174](tel:8043717174)

Email: [Vernon.Hodge@DHCD.virginia.gov](mailto:Vernon.Hodge@DHCD.virginia.gov)

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**From:** Lez [<mailto:lezcarp@gmail.com>]

**Sent:** Wednesday, May 06, 2015 10:04 AM

**To:** McMahan, Alan (DHCD); DHCD-Director; [jackie.stump@dhcd.virginia.gov](mailto:jackie.stump@dhcd.virginia.gov); Williams, Al (DHCD)

**Subject:** Re: Appeal to the Review Board

Dear Mr. McMahan:

I refer you to your July 30, 2014 email below (see underlined sentence) in which you state for the record that "either party can subsequently contact Review Board staff should they wish to move forward on the appeal." At no time did anyone in the SBCTRB inform me that Fairfax County or Ms. Perry had withdrawn her appeal. I understood her appeal was still postponed. Had I been informed of her withdrawal, I would have abated postponement and continued the appeal.

Therefore, I request that you reinstate the Appeal No. 14-5 and process my appeal application without delay. Please confirm by return email.

Sincerely,

Leslie Carper

from: [Alan.McMahan@dhcd.virginia.gov](mailto:Alan.McMahan@dhcd.virginia.gov)

to: [lezcarp@gmail.com](mailto:lezcarp@gmail.com) [Elizabeth.Perry@fairfaxcounty.gov](mailto:Elizabeth.Perry@fairfaxcounty.gov)

cc: [Vernon.Hodge@dhcd.virginia.gov](mailto:Vernon.Hodge@dhcd.virginia.gov) [Skip.Harper@dhcd.virginia.gov](mailto:Skip.Harper@dhcd.virginia.gov)

date: Wed, Jul 30, 2014 at 3:23 PM

subject: Fairfax County appeal to the Review Board (Appeal No. 14-5)

Dear Parties:

Our office was copied on the attached email correspondence between Ms. Lez Carper and Mr. Jim Nitschke, dated July 15, 2014. The email indicates that several repairs have and are being performed on several of the items cited by Fairfax County's Department of Code Compliance in its February 5, 2014 Notice of Violation, upon which the subject appeal is based.

At this point, Review Board staff can either move forward on the appeal by scheduling an informal fact-finding conference (IFFC) to discuss the matter and gain clarity on the appeal issues, or it can postpone any action at this level while repairs are completed and subsequently inspected by Fairfax County.

Please respond on whether you wish to move forward with the appeal and schedule an IFFC, or wait until more repairs are made. If both parties agree to a postponement, then Review Board staff will not move forward; however, if either party do not agree on a postponement, staff will contact the parties to get available dates from them for an IFFC. Also, if both parties agree to a postponement now, either party can subsequently contact Review Board staff should they wish to move forward on the appeal.

Should you have any questions, please contact me at [\(804\) 371-7175](tel:8043717175) or

[alan.mcmahan@dhcd.virginia.gov](mailto:alan.mcmahan@dhcd.virginia.gov)

Regards,

Alan McMahan, C.B.O., CLGM

On Wed, May 6, 2015 at 9:19 AM, McMahan, Alan (DHCD)  
<[Alan.McMahan@dhcd.virginia.gov](mailto:Alan.McMahan@dhcd.virginia.gov)> wrote:

Ms. Carper,

The Office of the Review Board received your appeal application to the Review Board, in addition to other related documents, Tuesday, May 5, 2015. The appeal referenced in your emails, Appeal No. 14-5, was withdrawn by Fairfax County, the

appellant, on November 24, 2014. As a result, there is no appeal on the matter before the Review Board.

If you suspect that code violations exist in your home, you should contact the Fairfax County Dept. of Code Compliance to have it conduct another inspection. And based on the results of the inspection, you could then decide whether you wanted to file a new appeal of that enforcement action to the local board of appeals, and then, if warranted, to the Review Board.

Should you have any questions, please contact me by email or phone: [\(804\) 371-7175](tel:(804)371-7175).

Regards,

Alan McMahan, C.B.O., CLGM  
*Senior Construction Inspector II and*

*Staff - State Building Code Technical Review Board*

*Department of Housing & Community Development*

*Division of Building & Fire Regulation  
State Building Code Office  
600 East Main Street, Suite 300  
Richmond, Virginia 23219  
[\(804\) 371-7175](tel:(804)371-7175)  
[\(804\) 371-7092](tel:(804)371-7092) - fax  
[alan.mcmahan@dhcd.virginia.gov](mailto:alan.mcmahan@dhcd.virginia.gov)*

Code Connection Blog <http://dhcdcodeconnection.wordpress.com>

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

Leslie Carper, 8626D Beekman Pl, Alexandria, VA 22309, lezcarp@gmail.com

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

Fairfax County Department of Code Compliance, Attn: Elizabeth Perry, Code Official  
 12055 Government Center Parkway, Ste 1016, Fairfax, VA 22035, 703.324.1377,  
 Elizabeth.perry@fairfaxcounty.gov; The Unit Owners Association of The Clusters at Woodlawn, A  
 Condominium, Board of Directors President Gloria J. Derobertis, 8624B Beekman Place, Alexandria, VA  
 22309, (H)703.360.2677, (C)571.232.4500 gderobertis@cox.net, Jean D. Bolen, Secretary, 8619A Beekman Pl,  
 (H)703.360.4910, (W)202.576.5512, James R. Gerling, Treasurer, 8629D Beekman Pl, (H)703.799.2141,  
 (W)703.428.2589, Anna M. Cabell, Member, 8601C Beekman Pl (H)703.780.4992, Nathan D. Grimsley,  
 Member, 8621A Beekman Pl (H)703.360.0270 (W)202.244.8880x18; Community Management Corp, property  
 manager Gita Lainez, 4840 Westfields Blvd, Ste 300, Chantilly, VA 20151, 703.230.8580, GLainez@cmc-  
 management.com

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 5 day of May, 2015, 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: Leslie Carper

Name of Applicant: Leslie Carper  
(please print or type)

Date Filed: May 7, 2015

Appealing Party Information:

Leslie Carper  
8626D Beekman Place  
Alexandria, VA 22309  
[lezcarp@gmail.com](mailto:lezcarp@gmail.com)

Opposing Parties Information:

Fairfax County Department of Code Compliance  
Attn: Elizabeth Perry, Code Official  
12055 Government Center Parkway, Ste 1016  
Fairfax, VA 22035  
703.324.1377  
[Elizabeth.perry@fairfaxcounty.gov](mailto:Elizabeth.perry@fairfaxcounty.gov)

The Unit Owners Association of The Clusters at Woodlawn, A Condominium, Board of Directors  
Attn: Gloria J. Derobertis, President, 8624B Beekman Place, Alexandria, VA 22309, (H)703.360.2677,  
(C)571.232.4500 [gderobertis@cox.net](mailto:gderobertis@cox.net)  
Jean D. Bolen, Secretary, 8619A Beekman Pl (H)703.360.4910, (W)202.576.5512  
James R. Gerling, Treasurer, 8629D Beekman Pl (H)703.799.2141, (W)703.428.2589  
Anna M. Cabell, Member, 8601C Beekman Pl (H)703.780.4992  
Nathan D. Grimsley, Member, 8621A Beekman Pl(H)703.360.0270, (W)202.244.8880x18

Community Management Corporation

Attn: Gita Lainez, property manager  
4840 Westfields Blvd, Ste 300  
Chantilly, VA 20151  
703.230.8580/8585/231.7200  
[GLainez@cmc-management.com](mailto:GLainez@cmc-management.com)

STATEMENT OF SPECIFIC RELIEF SOUGHT

Leslie Carper is appealing the May 19, 2014 decision of the Fairfax County Board of Building Code Appeals (BBCA) Appeal No. 140206.0AP on the following grounds:

- In his February 5, 2014 Notice of Violations (NOV), Fairfax County Department of Code Compliance (DCC) Code Compliance Investigator William A. Smoot erred in issuing Virginia Maintenance Code (VMC) Violation § 304.15 to me in violation of Virginia Code § 55-79.79(A)(ii). Further, Mr. Smoot's statutory violations forced me into an unlawful position; I was unable to abide by and comply with his NOV because the Common Elements are not my property but the Association's, and I am prohibited by law from improving, altering, developing, repairing, restoring, replacing, installing, or removing any real property not my own in compliance with § 18.2-137. (See below)

- In its May 19, 2014 resolution, the Fairfax County Board of Building Code Appeals (BBCA) erred in denying the portion of my appeal with respect to the sliding glass door, VMC § 304.15, in violation of Virginia Code § 55-79.79(A)(ii). (See below)
- The Unit Owners Association of The Clusters at Woodlawn, A Condominium, Board of Directors (Assn) and Community Management Corporation (CMC) did violate the abovementioned BBCA resolution: “The sliding glass door is not part of the common elements, and the appellant is responsible for repairing or replacing the sliding glass door.” By replacing the sliding glass door, the Assn and CMC did take responsibility for replacing it in defiance of the BBCA resolution, thereby violating the resolution. Further, their violation forced me into an unlawful position; I was unable to abide by and comply with the BBCA resolution because they did replace the door.
- By failing to take financial responsibility for replacing the sliding glass door, the Assn and CMC did violate § 55-79.79(A). Further, their statutory violation forced me into an unlawful position; I am unable to pay the invoice because to do so would be to violate the statute (and bylaws), which states that “replacement arising from a condition originating through the common elements (i.e., roof) is the unit owners’ associations responsibilities.”

In the abovementioned resolution, the BBCA wrote that the sliding glass door is not part of the common elements, and I was responsible for replacing the sliding glass door. The BBCA is correct insofar as items not damaged by the Assn’s common elements are concerned. The Assn Declarations Article II(C)(2) states that the unit owner is responsible for the balcony door of his unit.

Virginia Code § 55-79.79(A) concurs, “all powers and responsibilities, including financial responsibility, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (i) to the unit owner’s association in the case of the common elements, and (ii) to the individual unit owner in the case of any unit or any part thereof, except to the extent that the need for repairs, renovation, restoration or replacement arises from a condition originating in or through the common elements or any apparatus located within the common elements, in which case the unit owners’ association shall have such powers and responsibilities.”

In other words, any and all damages caused in or through the common elements, which are the Assn’s responsibility according to the Declarations Article II C.1.(b), Article III B.1.(b)(c)(d)(k), Bylaws Articles III. Sec. 3(a), V. Sec 1.(e)(f), X, and Virginia Code § 55-79.79(A), are also the Assn’s responsibility. By failing to accept full responsibility, including but not limited to, financial responsibility, for replacing the sliding glass door, whose damage arose “from a condition originating in or through the common elements,” i.e. roof, the unit owners’ association did fail in its responsibility and did violate the abovementioned statute. Further, by violating the abovementioned statute, the Assn did violate Bylaws Articles III. Sec. 3(a) and V. Sec.1(f). (See below)

Specific Relief Sought: With this formal complaint, we request that The State Building Code Technical Review Board enforce the Virginia Code § 55-79.79(A) and Assn Bylaws violated by the Assn and CMC and demand that they accept full responsibility for the excessive and unsubstantiated \$1880.00 invoice (and any and all fees) in compliance with the law.

## BYLAWS

### ARTICLE III. DIRECTORS

Section 3. Powers and Duties. The powers and duties of the Board of Directors shall include, but not be limited to, the following:

(a) care and upkeep of the Condominium, its Common Elements and any improvements in a manner consistent with law, and the provisions of these By-Laws and Declarations.

#### ARTICLE V. MANAGEMENT

Section 1. Common Expenses. The Association acting by and through its Board of Directors, shall manage, operate and maintain the Condominium and, for the benefit of the Units and the Association thereof, shall enforce the provisions hereof and shall pay out as Common Expense the following:

(e) The cost of painting, maintaining, replacing, repairing and landscaping the Common Elements, and such furnishings and equipment for the Common Elements as the Board of Directors shall determine are necessary and proper, and the Board of Directors shall have the exclusive right and duty to acquire the same;

(f) The cost of any and all other materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like which the Association is required to secure or pay for by law, or otherwise, or which in the discretion of the Board of Directors shall be necessary or proper for the operation of the Common Elements; provided, however, that if any of the aforementioned are provided or paid for the benefit of a particular Unit or Units, the cost thereof shall be especially assessed to the Unit Owner or Owner thereof in the manner provided in Article VI hereof.

Section 7. Unit Owners Liability. In the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Elements or to preserve the appearance or value of the Condominium or is otherwise in the interest of the general welfare of all the Units; provided, however, that no such maintenance or repair shall be undertaken without a resolution by the Board of Directors and not without reasonable written notice to the Unit Owner.

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)  
(As to jurisdiction)

IN RE:       Appeal of Leslie Carper  
              Appeal No. 15-7

**RESPONSE OF CLUSTERS AT WOODLAWN TO APPEAL OF LESLIE CARPER**

COMES NOW, The Unit Owners Association of the Clusters of Woodlawn, a Condominium (“Association”), by counsel, with its Response to the Appeal filed by Leslie Carper, and states:

1.       The Association contends that the Review Board has no jurisdiction to hear the appeal for the following reasons:

    a.       The appeal of Ms. Carper to the Review Board was not timely filed, and she fails to provide an explanation for why she did not timely file it.

    b.       Ms. Carper failed to prosecute her appeal before the LBBCA, and therefore, there is no appeal that forms the basis for an appeal to this body.

    c.       There are no existing code violations in dispute, and, therefore, there is no issue that is a proper basis for Review Board jurisdiction.

2.       If there is a substantive hearing on the merits, the Association requests the opportunity to be heard.

Respectfully submitted,

Clusters of Woodlawn, A Condominium Association

By Counsel

  
Jane Saindon Rogers (#41409)  
Whiteford, Taylor & Preston, L.L.P.  
1025 Connecticut Avenue, N.W.  
Suite 400  
Washington, DC 20036-5404  
(202) 659-6800  
*Counsel for Defendant*

CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of June 2015, I mailed the foregoing Response of Clusters at Woodlawn to Appeal of Leslie Carper, first-class mail, postage prepaid to:

Leslie Carper  
MyCondo2rent, LLC  
82626 Beekman Place  
Unit D  
Alexandria, VA 22309

  
Jane Saindon Rogers

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Jonathan and Carolyn Clark  
Appeal No. 14-13

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VIRGINIA:

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

IN RE: Appeal of Jonathan and Carolyn Clark  
Appeal No. 14-13

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1. On April 9, 2014, representatives of the Fairfax County Department of Code Compliance, acting on a complaint, conducted an inspection at 7227 Auburn Street, in Annandale; property which contains the home of Johathan and Carolyn Clark.
2. The inspection resulted in the issuance of a notice of violation to the Clarks under Part III of the Virginia Uniform Statewide Building Code, known as the Virginia Maintenance Code or VMC.<sup>1</sup>
3. The Clarks filed an appeal of the issuance of the notice to the County of Fairfax Board of Building Code Appeals, which heard the appeal in October of 2014 and ruled to uphold the issuance of the notice. The Clarks then further appealed to the Review Board.
4. Review Board staff conducted an informal fact-finding conference in March of 2015, attended by Mr. Clark, his legal counsel, representatives of the County Department of Code Compliance and its legal counsel.

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<sup>1</sup> The documents submitted to the Review Board indicate that two notices were issued, identical in all respects except for the date, one being dated April 10, 2014 and the other April 11, 2014. The April 10th notice is the only one in possession of the Review Board at the time of drafting of this document.

5. At the informal fact-finding conference, the posture of the appeal was discussed since the documents submitted indicated that the main issue raised to the County appeals board was that of asking for dismissal of the notice due to the County inspectors not having permission to come onto the property. After discussion, since both parties were represented by legal counsel, it was agreed that the parties would submit written briefs concerning the right of entry issue in lieu of attempting to establish the facts surrounding the issue in this staff document.

6. In addition, at the informal fact-finding conference, it was agreed that other issues that may be present in the appeal, such as whether an appeal of the technical merits of the violations cited is properly before the Review Board or whether the timeframe stipulated by the County for correction of the cited violations was reasonable would also be briefed by legal counsel for the parties. A briefing schedule was established.

7. The remainder of the informal fact-finding conference was spent discussing the actual citations and the following is a summary of the clarification of the cited violations resulting from the discussion:

VMC § 302.5 – This cited violation is for a hole in the siding on the gable end of the house that has the meter base and is to the right of the upper window.

VMC § 302.7 – This cited violation is for a section of fence on the ground on the right side (when facing the front) of the garage and for pickets in the section of the fence on the left side of the garage either missing or in disrepair.

VMC § 304.1 – This cited violation is for a hole in the right side (when facing the front) of the garage. In addition, this cited violation is for the following missing or deteriorated components: fascia board on the front of the house; trim on the door frame around the garage door; window sill on the upper window of the gable end of the house that has the meter base; siding under the front door sill; side trim and sills on both front dormer windows; and, soffit on back dormer (pulled away and hole).

VMC § 304.13 – This cited violation is for the same conditions specified under the cited violation for VMC § 304.1.

VMC § 304.2 – This cited violation is for the all the exterior wooden parts of the house and garage needing to be scraped and painted.

VMC § 304.6 – This cited violation is for the same exterior walls conditions specified under the cited violation for VMC § 304.1.

VMC § 304.7 – This cited violation is for a hole in the roof of the garage which was covered by a tarp.

Suggested Issues for Resolution by the Review Board

1. Whether to overturn the issuance of the notice of violation due to right of entry issues; and if not,
2. Whether there is a proper appeal before the Review Board to consider overturning the issuance of the notice of violation on the merits of the cited violations; and if so, whether to overturn the issuance of the notice of violation in consideration of the merits of the cited violations.
3. Whether there is a proper appeal before the Review Board to consider an extension to the timeframe for correction of any of the cited violations; and if so, whether to extend the deadline for correction of any of the cited violations.

# 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:** April 10, 2014

**METHOD OF SERVICE:** SHERIFF'S LETTER

**LEGAL NOTICE ISSUED TO:** Jonathan Clark  
**ADDRESS:** Carolyn Clark  
7227 Auburn Street  
Annandale, Virginia 22003

**LOCATION OF VIOLATION:** 7227 Auburn Street  
Annandale, Virginia 22003-5819

**TAX MAP REF:** 71-1 ((8)) 81

**CASE #:** 201401843 **SR #:** 103307

### POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

<b>CODE § 61-7-1(B):</b>	<b>Maintenance Code Violation(s)</b>	<b>First Offense</b>	<b>Each Subsequent Offense</b>
	§VMC302.5	\$ 100.00	\$ 150.00
	§VMC302.7	\$ 100.00	\$ 150.00
	§VMC304.1	\$ 100.00	\$ 150.00
	§VMC304.13	\$ 100.00	\$ 150.00
	§VMC304.2	\$ 100.00	\$ 150.00
	§VMC304.6	\$ 100.00	\$ 150.00
	§VMC304.7	\$ 100.00	\$ 150.00
<b>TOTAL:</b>		<b>\$ 700.00</b>	<b>\$ 1050.00</b>

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code-2009 Edition), an inspection on April 09, 2014 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.

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](http://www.fairfaxcounty.gov/code)

Jonathan Clark  
Carolyn Clark  
April 10, 2014  
SR 103307  
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**Violation: RODENT HARBORAGE VMC 302.5.** All structures and adjacent premises shall be kept free from rodent harborage and infestation where such harborage or infestation adversely affects the structures.

**Location:** The single family dwelling and garage.

**Work To Be Performed:** Repair the structures to keep out all animals.

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

**Location:** All accessory structures on the property.

**Work To Be Performed:** Repair all accessory structures, the detached garage and all fences on the property that are in disrepair.

**Violation: EXTERIOR STRUCTURE GENERAL VMC 304.1.** The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

**Location:** The dwelling and garage on the property.

**Work To Be Performed:** Repair all holes on the house and the garage on the property. Repair and or replace all untreated rotten exterior wood on the house and garage.

**Violation: WINDOW, SKYLIGHT & DOOR FRAMES VMC 304.13.** Every window, skylight, door and frame shall be kept in sound condition and good repair and weather tight.

**Location:** All windows on the single family dwelling and the garage.

**Work To Be Performed:** Repair and or repair the frames on all windows on the garage and single family dwelling.

**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

Jonathan Clark  
Carolyn Clark  
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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:** The garage and single family dwelling on the property.

**Work To Be Performed:** Scrape and paint the entire dwelling and garage.

**Violation: EXTERIOR WALLS VMC 304.6.** All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

**Location:** The single family dwelling and garage on the property.

**Work To Be Performed:** Repair all holes in the house and garage and make the structures weatherproof and so they keep out animals.

**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:** The garage on the property.

**Work To Be Performed:** Repair roof on the garage that is located on the property or demolish garage with a permit and dispose of entire garage at a lawful site.

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:

Jonathan Clark  
Carolyn Clark  
April 10, 2014  
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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](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)324-1348. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:

Signature

Charles D. Forshee  
Code Compliance Investigator III  
(703)324-1348

Received

APR 28 2014

Date: 4/25/14

Land Development Services  
Director's Office

140428.0AP

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

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

The subject of this appeal is located at:

7227 Auburn Street, Annandale VA

71-1-8-81

Street Address

Tax Map No.

Subdivision Annandale Acres

Section No. \_\_\_\_\_

Lot No. \_\_\_\_\_

As the building  owner  owner's agent, I am hereby appealing the decision of the Fairfax County Code Official noted above whereby it was determined that: (describe the decision; a copy of the decision must be attached)

See attached NOVs

The decision of the Code Official was rendered on: 4/10/14 reissued 4/11/14  
date

The Code Official's decision was based on the following code and section(s):

See Attached NOVs

Code Name

Edition (year)

Section(s)

This appeal is being filed for the following reason or reasons:

See Attached Appeal

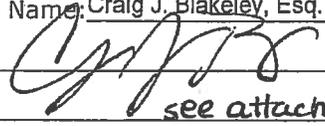
The following points are relevant:

See Attached Appeal

Owner's Name: Jonathan and Carolyn Clark

Submitter's Name: Craig J. Blakeley, Esq.

Signature: \_\_\_\_\_

Signature: 

Address: \_\_\_\_\_

Address: see attached appeal

City, State, Zip: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

## Appeal to the Fairfax County Board of Building Code Appeals

### Notice of Violation Virginia Maintenance Code

Date Issued: April 11, 2014

Location of Alleged Violation: 7227 Auburn Street  
Annandale, VA 22003

Case No.: 201401843

SR No.: 103307

Jon and Carolyn Clark, who own and reside at 7227 Auburn Street, Annandale, VA, 22003 ("Property"), by counsel, hereby appeal the Notice of Violation ("NOV") of the Virginia Maintenance Code that was first issued on April 10, 2014 and reissued on April 11, 2014 by Charles D. Forshee of the Fairfax County Department of Code Compliance ("DCC"). Copies of both of those documents are attached. Aside from the difference in the Date of Issuance, the two documents appear to be otherwise identical. After a telephone discussion between the undersigned counsel and Ms. Racheal Perrott of the DCC, Mr. Forshee's Supervisor, followed by the attached confirming email from Ms. Perrott, it was agreed that the 14-day appeal period for this Notice of Violation should be calculated from the date of the second Notice of Violation of the Maintenance Code, i.e., April 11, 2014. Thus, this appeal is timely filed.

### SUMMARY OF ARGUMENT

The NOV is invalid because it was based upon an illegal and unauthorized entry onto and search of the Property, thus violating the 4<sup>th</sup> Amendment to the U.S. Constitution. Moreover, the NOV violates Section 104.5.4.2 of the Virginia Maintenance Code which states that the "notice of violation *shall* indicate the right of appeal by referencing the appeals section of this code." The NOV is defective because it does not provide any such reference. Finally, even assuming that the NOV was otherwise

valid, which it was not, given the multiple remedial actions required by the NOV, it does not provide a "reasonable time" to correct the alleged violations as required by Section 104.5 .4.2 of the Virginia Maintenance Code. Each of these points is discussed further below.

### ARGUMENT

1. **The NOV is Invalid and Illegal Because the DCC Inspectors Did Not Have Permission to Enter the Property and Did Not Have a Warrant Authorizing Entry Onto the Property, Thereby Violating the 4<sup>th</sup> Amendment to the U.S. Constitution .**

As set forth in Virginia's Magistrate Manual, an "administrative search, as defined by Katz v. United States, 389 U.S. 347 (1967) and Camara v. Municipal Court, 387 U.S. 523 (1967) is any government action which intrudes upon a legitimate expectation of privacy." (Magistrate Manual, p. 5-55, Rev: 1/14). As further stated on the same page in the Magistrate Manual, "Camara v. Municipal Court . . . placed administrative searches within the scope of the Fourth Amendment. Camara went on to hold that, absent consent or exigent circumstances, a search warrant is required before the administrative search can take place."

There is no question but that a reasonable expectation of privacy exists in one's home and in the area surrounding that home. In the case at issue here, which involved an administrative search of the Property, there were no exigent circumstances nor did Mr. Forshee or the other Inspector, Al Sanchez, who accompanied him, have a search warrant. Moreover, the DCC Inspectors did not have consent to enter onto the Property.

Mr. Clark was inside his home at the time of the unauthorized entry of the Inspectors onto the Property. The Inspectors did not knock or in any way attempt to gain permission to enter onto the Property. Mr. Clark happened to look out the window and noticed two people walking around the driveway area near the garage. When confronted, the Inspectors did not ask Mr. Clark's permission to be there, nor did Mr. Clark give it. The Inspectors left the Property within a short time thereafter,

demonstrating that they had largely completed their search before Mr. Clark saw them. The Inspectors' entry onto the Clarks' Property and their search of it, both actions undertaken without a warrant or consent, thus violated the 4<sup>th</sup> Amendment.

Nor did the Inspectors tell Mr. Clark they were searching the premises for maintenance code violations. Instead, Mr. Forshee told Mr. Clark they were there investigating a complaint of "multiple occupancy."

Two people live on the Property. The Inspectors could have easily ruled out a multiple occupancy violation without entering onto the Property – by observing the number of people and/or vehicles entering and leaving the Property, for example. Moreover, having chosen to enter onto the Property, the Inspectors never sought to enter the Clarks' home to ascertain whether there was a multiple occupancy violation. Instead, they inspected the outside of the Clarks' garage, including the roof, the back of the Clarks' home, its roof and windows, and other accessory structures, such as the fence. Thus, the Inspectors' actions seem completely inconsistent with the purpose they articulated to Mr. Clark for their presence on the Property – the determination of whether there was a "multiple occupancy" violation. Indeed, in all other respects, their search of the Property far exceeded anything that would have been reasonably necessary to determine whether there was, in fact, a multiple occupancy violation.

2. **The NOV Does Not Comply with Section 104.5.4.2 of the Virginia Maintenance Code and thus is invalid.**

Section 104.5.4.2 of the Virginia Maintenance Code requires that the notice of violation provide the specific section the Maintenance Code that authorizes appeals. Specifically, Section 104.5.4.2 states that the "notice of violation shall indicate the right of appeal by referencing the appeals section of this

code.” (Emphasis added). As indicated on the attached notice of violation (NOV), there is no such reference to the appeal section of the code. Therefore, the NOV is defective and should be dismissed.

**3. The NOV Violates Section 105.4.2 of the Virginia Maintenance Code Because It Does Not Provide a “Reasonable Time” for the Correction of the Alleged Violations.**

The Notice of Violation issued in this case states that “[t]he cited violations must be corrected within **30** days from receipt of this notice unless otherwise indicated.” (Emphasis in original). No such contrary indication is contained in the NOV. Thus, each of the cited violations must be satisfactorily remedied within that 30-day period. These include all of the following:

- Repair the single family dwelling and the garage to keep out all animals.
- Repair all accessory structures, the detached garage and all fences on the Property that are in disrepair.
- Repair all holes on the house and the garage on the Property. Repair and or replace all untreated rotten exterior wood on the house and garage.
- Repair and or repair (*sic*) the frames on all windows on the garage and single family dwelling.
- Scrape and paint the entire dwelling and garage.
- Repair roof on the garage that is located on the Property or demolish garage with a permit and dispose of entire garage at a lawful site.

Section 104.5 .4.2 of the Virginia Maintenance Code states that the “notice shall require the correction of the violations within a reasonable time....” (Emphasis added.) Assuming for the sake of argument that the violations cited in the NOV were validly issued and that the alleged violations identified therein are well-founded (neither of which do we concede) we submit that 30 days is not a

"reasonable time" for homeowners who work full-time (such as the Clarks) to accomplish the myriad of repairs demanded in the NOV.

**4. Reservation of Rights**

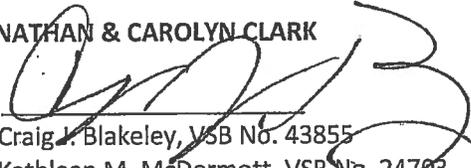
We reserve the right to supplement these arguments, and to raise additional arguments, at or prior to the hearing.

**CONCLUSION**

For the above reasons, we submit that the Notice of Violation issued on April 10, 2014 and reissued on April 11, 2014, should be dismissed.

Respectfully submitted

**JONATHAN & CAROLYN CLARK**

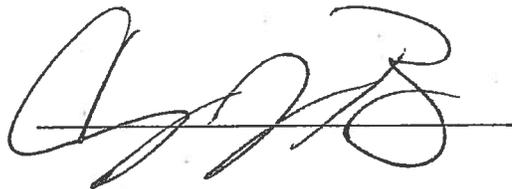
By: 

Craig J. Blakeley, VSB No. 43855  
Kathleen M. McDermott, VSB No. 24703  
Counsel

Alliance Law Group LLC  
7700 Leesburg Pike, Suite 229  
Tysons Corner, VA 22043-2623  
(703) 848-8336 (p)  
(703) 848-8265 (f)  
[cblakeley@alliancelawgroup.com](mailto:cblakeley@alliancelawgroup.com)  
[kmcdermott@alliancelawgroup.com](mailto:kmcdermott@alliancelawgroup.com)

**CERTIFICATE OF SERVICE**

I hereby certify that, on April 25, 2014, I mailed via U.S. First Class mail, the foregoing Appeal of Jonathan and Carolyn Clark, to Chairman, Fairfax County Board of Building Code Appeals, 12055 Government Center Parkway, Suite 444, Fairfax VA 22035-5504, Attention: Secretary to the Board.



## 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 VUSBC (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. 140428.0AP

In RE: Jonathan Clark

Carolyn Clark

7227 Auburn St.

Annandale, VA 22003

v. Fairfax County Department  
of Code Compliance

The appeal is hereby denied by a vote of 3-1, <sup>JCF</sup> one abstention and one ~~recusal~~ <sup>JCF</sup>.  
Note, the chairman recused himself from participation in discussion, motions or voting on this case and therefore was a no vote.

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: 10/21/2014

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 Guerra-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 Guerra-Moran  
CUSTODIAN

I Audrey Clark 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 Guerra-Moran is the custodian and that

Carla Guerra-Moran reports to me.  
CUSTODIAN  
Audrey Clark  
SUPERVISOR OF CUSTODIAN

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
Technical Assistance Services Office (TASO) 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: [TASO@dhcd.virginia.gov](mailto:TASO@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):

Jonathan & Carolyn Clark, 7227 Auburn St., Annandale, VA 22003

(703) 941-1612; [jnmmc@verizon.net](mailto:jnmmc@verizon.net)

Represented by Craig J. Blakeley, VSB 43855, Alliance Law Group LLC, 7700 Leesburg Pike  
Suite 229, Falls Church, VA 22043 (703) 848-8336; [cblakeley@alliancelawgroup.com](mailto:cblakeley@alliancelawgroup.com)

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

Fairfax County Department of Code Compliance, 12055 Government Center Parkway 1016  
Fairfax, VA 22035 (703) 324-1300 ([Jeff.Blackford@fairfaxcounty.gov](mailto:Jeff.Blackford@fairfaxcounty.gov)) Mr. Blackford is the  
Director of the Department of Code Compliance.

Paul Emerick, Esq., Assistant County Attorney, Office of the County Attorney,  
12000 Government Center Parkway, Suite 549  
Fairfax, VA 22035-2665 (703) 324-1000; ([paul.emerick@fairfaxcounty.gov](mailto:paul.emerick@fairfaxcounty.gov))  
Mr. Emerick appeared at the BBCA hearing on behalf of the Department of Code Compliance.

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

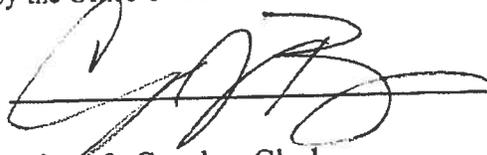
CERTIFICATE OF SERVICE

I hereby certify that on the 14<sup>th</sup> day of November 2014, 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:  
(By Counsel)



VSB No. 43805

Name of Applicant:

Jonathan & Carolyn Clark

(please print or type)

**Appeal to the Virginia State Technical Review Board from a decision of the  
Fairfax County Board of Building Code Appeals**

**Notice of Violation  
Virginia Maintenance Code**

**Date NOV Issued:** April 10/11, 2014

**Issued to:** Jonathan & Carolyn Clark  
7227 Auburn Street  
Annandale, VA 22003

**Date Resolution Received from Fairfax County Board of Building Code Appeals:** Oct. 24,  
2014

**BBCA Appeal No.:** 140428.0AP

**STATEMENT OF SPECIFIC RELIEF SOUGHT**

Jon and Carolyn Clark ("Clarks"), who own and reside at 7227 Auburn Street, Annandale, VA, 22003 ("Property"), by counsel, hereby appeal the decision of the Fairfax County Board of Building Code Appeals ("BBCA") which upheld by a 3 -1 vote the Notice of Violations ("NOV") of the Virginia Maintenance Code that was issued on April 10 and 11, 2014 by Charles D. Forshee of the Fairfax County Department of Code Compliance ("DCC").<sup>1</sup> The Resolution of that decision was received by counsel for the Clarks on October 24, 2014. This appeal is filed within 21 days of the receipt of that Resolution. Thus, this appeal is timely filed.

**SUMMARY OF ARGUMENT**

The NOV is invalid because it was based upon an illegal and unauthorized entry onto and search of the Property, thus violating the 4<sup>th</sup> Amendment to the U.S. Constitution. The NOV also violated Va. Code § 36-105(C)(3). That statutory section specifies that, in the case of inspections and enforcement of the Building Code, the building department must first request

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<sup>1</sup> Two identical Notices of Violations were delivered to the Clarks. Attached is a copy of the NOV dated April 10, 2014.

consent of the owner before conducting an inspection of a building and, if such consent is refused, must obtain an inspection warrant. In this case, neither step was taken. Moreover, the NOV violates Section 104.5.4.2 of the Virginia Maintenance Code which states that the “notice of violation *shall* indicate the right of appeal by referencing the appeals section of this code.” (Emphasis added). The NOV is defective because it does not provide any such reference. For these reasons, the NOV should be dismissed and the decision of the BBCA reversed. Finally, even assuming that the NOV was otherwise valid, which it was not, given the multiple remedial actions required by the NOV, it does not provide a “reasonable time” to correct the alleged violations as required by Section 104.5 .4.2 of the Virginia Maintenance Code. Accordingly, even if the NOV is upheld, it should be modified to provide a reasonable time for the Clarks to address and remedy the alleged violations. Each of these points is discussed further below.

### ARGUMENT

1. **The NOV is Invalid and Illegal Because the DCC Inspectors Did Not Have Permission to Enter the Property and Did Not Have a Warrant Authorizing Entry Onto the Property, Thereby Violating the 4<sup>th</sup> Amendment to the U.S. Constitution.**

As set forth in Virginia’s Magistrate Manual, an “administrative search, as defined by Katz v. United States, 389 U.S. 347 (1967) and Camara v. Municipal Court, 387 U.S. 523 (1967) is any government action which intrudes upon a legitimate expectation of privacy.” (Magistrate Manual, p. 5-55, Rev: 1/14). As further stated on the same page in the Magistrate Manual, “Camara v. Municipal Court . . . placed administrative searches within the scope of the Fourth Amendment. Camara went on to hold that, absent consent or exigent circumstances, a search warrant is required before the administrative search can take place.”

There is no question but that a reasonable expectation of privacy exists in one's home and in the area surrounding that home. In the case at issue here, which involved an administrative search of the Property, there were no exigent circumstances nor did Mr. Forshee or the other Inspector, Al Sanchez, who accompanied him, have an inspection warrant. Moreover, the DCC Inspectors did not have consent to enter onto the Property, nor did they request any such consent.

Mr. Clark was inside his home at the time of the unauthorized entry of the Inspectors onto the Property. The Inspectors did not knock at the door of the Clarks' home or in any way attempt to gain permission to enter onto the Property. Mr. Clark happened to look out the window and noticed two people walking around the driveway area near the garage. When confronted, the Inspectors did not ask Mr. Clark's permission to be there, nor did Mr. Clark give it. The Inspectors left the Property within a short time thereafter, demonstrating that they had largely completed their search before Mr. Clark saw them. The Inspectors' entry onto the Clarks' Property and their search of it, both actions undertaken without a warrant or consent, thus violated the 4<sup>th</sup> Amendment to the U.S. Constitution.

Nor did the Inspectors tell Mr. Clark they were searching the premises for maintenance code violations. Instead, Mr. Forshee told Mr. Clark they were there investigating a complaint of "multiple occupancy."

Two people live on the Property – Jonathan and Carolyn Clark. The Inspectors could easily have ruled out a multiple occupancy violation without entering onto the Property – by observing the number of people and/or vehicles entering and leaving the Property, for example. Moreover, having chosen to enter onto the Property, the Inspectors never sought to enter the Clarks' home to ascertain whether there was a multiple occupancy violation. Instead, they inspected the outside of the Clarks' garage, including the roof, the outside of the Clarks' home,

its roof and windows, and other accessory structures, such as the fence. Thus, the Inspectors' actions seem completely inconsistent with the purpose they articulated to Mr. Clark for their presence on the Property – the determination of whether there was a “multiple occupancy” violation. Indeed, in all other respects, their search of the Property far exceeded anything that would have been reasonably necessary to determine whether there was, in fact, a multiple occupancy violation.

Because the inspection and search of the Clarks' home and property was undertaken without consent or an inspection warrant, it violated the Fourth Amendment to the U.S. Constitution. Accordingly, the NOV should be dismissed and the decision of the Fairfax BBCC reversed.

**2. The Inspectors and the Fairfax County Department of Code Compliance Failed to Comply with the Requirements of Va. Code § 36-105(C)(3).**

By failing to request and obtain consent or to obtain an inspection warrant prior to the inspection of the Clarks' property, the DCC Inspectors not only violated the Fourth Amendment but also Section 36-105(C)(3), Va. Code.

Section 36-105(C)(3) states as follows:

“Inspection warrants. If the local building department receives a complaint that a violation of the Building 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 local building official or his agent to have access to the subject building or structure, the local building official or his agent may make an affidavit under oath before a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject building or structure for the purpose of determining whether violations of the Building Code exist.”

In this case, the DCC Inspectors did not request or obtain consent for the inspection of the Clarks' home and property nor did they obtain an inspection warrant. By failing to do so, they violated Va. Code § 36-105(C)(3). Accordingly, the NOV should be dismissed and the decision of the BBCA reversed.

3. **The NOV Does Not Comply with Section 104.5.4.2 of the Virginia Maintenance Code and thus is invalid.**

Section 104.5.4.2 of the Virginia Maintenance Code requires that the notice of violation provide the specific section the Maintenance Code that authorizes appeals. Specifically, Section 104.5.4.2 states that the "notice of violation **shall** indicate the right of appeal by referencing the appeals section of this code." (Emphasis added). As indicated on the attached NOV, there is no such reference to the appeal section of the code. Therefore, the NOV is defective and should be dismissed and the decision of the BBCA reversed.

4. **The NOV Violates Section 105.4.2 of the Virginia Maintenance Code Because It Does Not Provide a "Reasonable Time" for the Correction of the Alleged Violations.**

The Notice of Violations issued in this case states that "[t]he cited violations must be corrected within **30** days from receipt of this notice unless otherwise indicated." (Emphasis in original). No such contrary indication is contained in the NOV. Thus, each of the cited violations must be satisfactorily remedied within that 30-day period. These include **all** of the following:

- Repair the single family dwelling and the garage to keep out all animals.
- Repair all accessory structures, the detached garage and all fences on the Property

that are in disrepair.

- Repair all holes on the house and the garage on the Property. Repair and or replace all untreated rotten exterior wood on the house and garage.
- Repair and or repair (*sic*) the frames on all windows on the garage and single family dwelling.
- Scrape and paint the entire dwelling and garage.
- Repair roof on the garage that is located on the Property or demolish garage with a permit and dispose of entire garage at a lawful site.

Section 104.5 .4.2 of the Virginia Maintenance Code states that the “notice shall require the correction of the violations within a **reasonable** time....” (Emphasis added.) Assuming for the sake of argument that the violations cited in the NOV were validly issued and that the alleged violations identified therein are well-founded (neither of which do we concede) we submit that 30 days is not a “reasonable time” for homeowners who work full-time (such as the Clarks) to accomplish the myriad of repairs demanded in the NOV. Accordingly, the NOV should be modified to provide a reasonable period of time for the Clarks to address and correct the alleged violations.

##### 5. **Reservation of Rights**

We reserve the right to supplement these arguments, and to raise additional arguments, at or prior to the hearing.

#### **CONCLUSION**

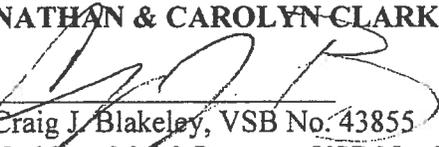
For the above reasons, we submit the Notice of Violations should be dismissed and the decision of the Fairfax BBCA reversed. Alternatively, the period of time provided for

correction of the alleged violations should be increased to provide a reasonable time period for so doing.

Respectfully submitted

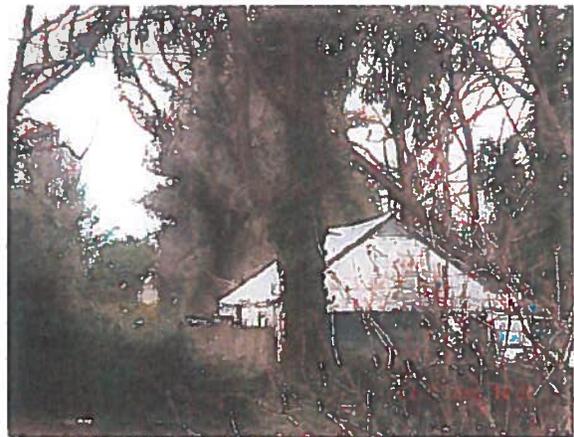
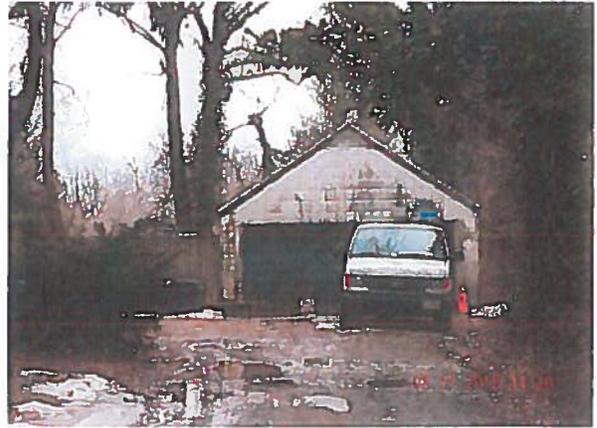
**JONATHAN & CAROLYN CLARK**

By:

  
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**VIRGINIA:**

**BEFORE THE STATE BUILDING CODE TECHNICAL REVIEW BOARD**

**IN RE:       Appeal of Jonathan and Carolyn Clark  
              Appeal No. 14-13**

**PROPERTY MAINTENANCE CODE OFFICIAL'S MEMORANDUM IN  
OPPOSITION TO THE APPEAL AND IN SUPPORT OF THE DECISION  
OF THE FAIRFAX COUNTY LOCAL BOARD OF BUILDING CODE APPEALS**

The Respondent, Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia, by counsel, hereby submits the following memorandum in opposition to the Petitioners' appeal.

**A.   PROCEDURAL POSTURE, NATURE OF THE CASE, AND PARTIES**

Petitioners Jonathan and Carolyn Clark, by counsel, ask this Board to overturn the Fairfax County Local Board of Building Code Appeal's October 21, 2014, decision upholding the Code Official's April 22, 2014, Notice of Violation. However, the Clark's appeal is based on a dubious legal argument offered solely to avoid the substantive merits of the otherwise undisputed violations of the Virginia Maintenance Code.

The Clarks own the residential property located at 7227 Auburn Street, Annandale, Virginia ("the subject property"). The subject property is also identified on the Fairfax County Real Property Identification Map as Tax Map No. 71-1((8)) parcel 81, and contains approximately 1.0035 acres, and is zoned to the R-1 District (Residential District, One Dwelling Unit/Acre).

Pursuant to Va. Code Ann. § 36-105(C) (Supp. 2014), the Board of Supervisors has the power to enforce the Virginia Uniform Statewide Building Code, Part III,

Maintenance (2009 Edition) ("Virginia Maintenance Code"), which contains the regulations for the maintenance of existing buildings and structures.

The Board of Supervisors has designated the Director of the Fairfax County Department of Code Compliance or his duly authorized representative to be the Property Maintenance Code Official for Fairfax County, Virginia ("Code Official"). Elizabeth Perry is the duly authorized representative of the Director of the Fairfax County Department of Code Compliance, and she serves as the Code Official in Fairfax County, Virginia. Pursuant to Virginia Maintenance Code §§ 104.4 and 104.5.7, she is charged with the administration and enforcement of the Virginia Maintenance Code in Fairfax County, Virginia, and she is authorized to institute appropriate legal action to require correction or abatement of violations of the Virginia Maintenance Code.

The violations cited under the Virginia Maintenance Code for the deterioration of the various exterior elements of the subject property, including the house, garage, and fence are basically uncontested. Rather, the Clarks assert that the obvious condition of their property notwithstanding, their appeal should be granted, and the Notice of Violation dismissed, because they claim that the "inspection" of the property was unconstitutional. Furthermore, the Clarks assert that they were denied a necessary element of procedural due process because the Notice of Violation did not reference the specific Code section number for purposes of an appeal. Finally, the Clarks maintain that the Notice of Violation did not provide ample time for compliance.

**B. POINTS AND AUTHORITIES**

- The 4<sup>th</sup> Amendment recognizes only a reasonable expectation of privacy.

During the initial inspection of the subject property on April 9, 2014, DCC Investigators Charles Forshee and Al Sanchez approached the Clarks' house via a long driveway from Auburn Street. However, before they found their way to the front door, they were met in the driveway by Mr. Clark, wherein an amicable conversation ensued over the condition of the garage, broken fence, etc. Now, beginning with the Local Board, the Clarks claim that DCC's presence on the subject property in April 2014, amounts to an unconstitutional search.

The Clarks assert that the Fourth Amendment of the U.S. Constitution and Article 10 of the Virginia Constitution mandate that an administrative warrant was required before the Department of Code Compliance ("DCC") investigators could enter the subject property. Under well-settled law, no such warrant is uniformly required, and under the facts of this case, the DCC investigators were completely within Constitutional parameters. The Fourth Amendment does not protect the merely subjective expectation of privacy, but only those expectations that society is prepared to recognize as "reasonable." *Oliver v. United States*, 466 U.S. 170, 177 (1984). Furthermore, Fourth Amendment protection has never been extended to require law enforcement officials to shield their eyes when passing by a home on a public thoroughfare. *California v. Ciraolo*, 476 U.S. 207, 213 (1986). Therefore, what a person knowingly exposes to the public, even in his home or office, is not subject of Fourth Amendment protection. *Id.*

- The plain view doctrine holds that what a person exposes to the public is not subject to 4<sup>th</sup> Amendment protection.

A public official's observation of a condition that is in plain view does not constitute a search as long as the official has a lawful right to be at the location from which the condition is plainly viewed. The Virginia Court of Appeals has held that in the course of urban life, citizens expect various members of the public will enter upon their property. These include a salesman, postmen, distressed motorists, or neighbors, and any one of them may be reasonably expected to report their observations. In fact, there is extended to the public an implied invitation to enter a driveway and front sidewalk of the premises where the owner has not erected any physical barriers barring entry. *Robinson v. Commonwealth*, 45 Va. App. 592, 612 S.E.2d 751 (2005). No reasonable expectation of privacy exists in these circumstances. *Id.* See also, *Shaver v. Commonwealth*, 30 Va. App. 789, 796, 520 S.E.2d 393, 396 (1999).

The same implied invitation is given to police officers who enter the curtilage while in pursuit of legitimate police business. *Shaver*, 30 Va. App. at 796. Thus, when such officials enter onto private property in order to conduct an investigation or for another legitimate purpose and restrict their entry to places that other visitors would be expected to go, such as walkways, driveways, or porches, any observation made from these areas is permissible under the Fourth Amendment. *Robinson*, 45 Va. App. at 612, citing *Trimble v. State*, 816 N.E.2d 83, 88 (Ind. Ct. App. 2004).

An implied invitation is generally presumed to exist absent evidence of an affirmative intent to exclude the public from the premises. Such evidence includes, for example, the erection of physical barriers, a gate across the driveway, or signs stating,

"no trespassing" or "private property." Here, no such signs or barriers were present on the subject property. Furthermore, if a public official is standing on a public sidewalk, where he has a lawful right to be, and observes excessive outdoor storage, a junk yard, or some other code violation, such observations do not constitute a search. Likewise, those conditions may also be lawfully observed from an adjoining private property with no expectation of privacy by the offending party. *See, L.R. Willson & Sons, Inc. v. Occupational Safety & Health Review Comm'n*, 134 F.3d 1235 (4<sup>th</sup> Cir. 1998) (OSHA violations on a construction site were readably observable from the roof of a neighboring hotel).

In this instance, the DCC investigators encountered Mr. Clark in the driveway of the subject property before they reached Clark's front door. At no time during the ensuing conversation did Mr. Clark object to their presence. Moreover, much of the information gleaned from the visit was volunteered by Mr. Clark. Finally, the elements of the property over which the Clarks now assert a privacy interest are readily observable from beyond the limits of the property. That is, the "*roof and windows, and other accessory structures, such as the fence*" are in plain view.<sup>1</sup> Clearly, there is no expectation of privacy with regard to these obvious zoning ordinance violations, all of which can be seen from beyond the property boundary, and Mr. Clark volunteered much of the information that corroborates the various violations.

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<sup>1</sup> Indeed, a simple "street view" search on Google Maps reveals the obvious conditions/violations at 7227 Auburn Street cited by the DCC officials. Further, the photos taken by the DCC officials subsequent to the first inspection were taken from beyond the limits of the subject property.

- Va. Code § 36-105(C)(3) Provides for a Walk Up Inspection

The Clarks also argue that the DCC officials are required to obtain a warrant before entering the subject property. That position is untenable, unnecessary, and burdensome. Va. Code Ann §36-105(C)(1) provides that "[t]he local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not." However, an administrative warrant is not required, nor is it practical to require a warrant in every instance since many initial contacts with homeowners or tenants can and have resulted in a finding of no violation or voluntary compliance where a violation is found. Furthermore, it is inconsistent with the statutory enforcement scheme in that Va. Code § 36-105(C)(3) specifically provides that the local building 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. That is exactly what the DCC Investigators did in this case, and is their customary practice in nearly every other instance.

- There is no Due Process Violation.

The Clarks maintain that the Virginia Maintenance Code Notice of Violation is fatally defective because it allegedly failed to include the actual Code Section as a citation in the Notice. Here, the Clarks continue to elevate form over substance. The Notice of Violation clearly advised the Clarks of the right to appeal "within 14 calendar days" and additionally included the address, phone number and e-mail address for appeal applications. This argument has no merit whatsoever.

The Supreme Court of the United States has consistently held that the notice required to satisfy due process is to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information. Further, the constitutional violation is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process. *Lee v. City of Norfolk*, 281 Va. 423, 706 S.E.2d 330 (2011). The fact that the Clarks timely filed their appeal to the LBBCA, that they had a hearing on September 9, 2014, that this matter has now been appealed to this Board is proof in itself that they have not been denied due process of law.

C. CONCLUSION

Based on the foregoing grounds, and the record before the TRB, the Code Official respectfully requests that this honorable Board affirm the Local Board's decision dated October 21, 2014, based on the Board's collective experience, the specialized competence of the agency, and the purposes of the basic law under which the TRB conducts its business.

Respectfully submitted,

ELIZABETH PERRY, PROPERTY  
MAINTENANCE CODE OFFICIAL FOR  
FAIRFAX COUNTY, VIRGINIA

By



Counsel

DAVID P. BOBZIEN  
COUNTY ATTORNEY

By   
Paul T. Emerick (VSB No. 33443)  
Assistant County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
(703) 324-2421; fax (703) 324-2665  
Counsel for Respondent Elizabeth Perry, Property  
Maintenance Code Official for Fairfax County, Virginia

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of May 2015, a true copy of the foregoing Respondent's Memorandum in Opposition to the Appeal and in Support of the Decision of the Fairfax County Board of Building Code Appeals was mailed first-class postage prepaid to:

Craig J. Blakeley, Esquire  
Alliance Law Group, LLC  
7700 Leesburg Pike, Suite 229  
Tysons Corner, VA 22043

  
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**Appeal to the Virginia State Technical Review Board from a decision of the Fairfax County Board of Building Code Appeals**

**Notice of Violation  
Virginia Maintenance Code**

**Appellants: Jonathan & Carolyn Clark  
7227 Auburn Street  
Annandale, VA 22003**

**BBCA Appeal No. 140428.0AP**

**Additional Argument of Appellants Concerning Entry Onto to the Clarks' Property in Violation of the Fourth Amendment to the U.S. Constitution and Challenge to the Validity of the NOV in View of the Information Disclosed at the Informal Fact-Finding Conference**

Pursuant to the Review Board Staff Document, which was issued on April 15, 2015, Appellants Jonathan & Carolyn Clark (“Clarks” or “Appellants”), by counsel, hereby submit additional information concerning the argument set forth in their appeal, that the Notice of Violation (“NOV”) issued to them with respect to the above-referenced property, should be dismissed because the Inspectors from the Fairfax County Department of Code Compliance (“DCC”) violated their rights under the Fourth Amendment to the United States Constitution. In addition, pursuant to the Review Board Staff Document, the Clarks hereby present additional arguments, based upon the information disclosed at the Informal Fact-Finding Conference, as to why the NOV is defective and should be dismissed. This document supplements, but does not replace, the arguments previously advanced in the Clarks’ original appeal.

**I. THE INSPECTORS' ENTRY UPON THE CLARKS' PROPERTY WAS ILLEGAL AND IN VIOLATION OF THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION.**

In its original appeal to the Review Board, the Clarks asserted that the NOV was improperly issued and should be dismissed because the evidence that allegedly supported the issuance of the NOV was collected in violation of the Fourth Amendment.

As noted in Appellants' Brief filed with their appeal of this matter, the inspection of the Clarks' property by the DCC Inspectors was subject to the requirements of the Fourth Amendment. As such, the Inspectors' entry upon the Clarks' property required either consent from the Clarks or an inspection warrant. In this case, the Inspectors had neither.

Under established case law, the Inspectors had a limited right to enter onto the Clarks property for the purpose of requesting permission to conduct the inspection. This right of entry entailed them entering onto the driveway, accessing the sidewalk, which goes from the driveway, immediately next to the front of the house, in order to knock on the Clarks' front door, which is in the middle of the front of the house.

As the Virginia Court of Appeals stated in *Robinson v. Commonwealth*, 74 Va.App. 533, 545, 625 S.E.2d 651,657 (2006), "It is generally recognized that, absent any affirmative attempts to discourage trespassers, owners or possessors of private property impliedly consent to have members of the general public intrude upon certain, limited areas of their property." (Emphasis added). "This invitation, where it exists, extends only to those areas of the property that would be used when approaching the residents in an ordinary attempt to speak with the occupants." *Id.* At 546, 625 S.E.2d at 657. (Emphasis added). "By extension, the same implied consent is extended to police officers who enter the curtilage [*i.e.*, the area immediately surrounding a private house] and, while on the premises, restrict their conduct to those activities reasonably

contemplated by the homeowner.” *Id.* Thus, any implied consent given by the Clarks extended only to permitting the Inspectors to enter onto their property for the purpose of knocking at the front door of their home – and no further.

In this case, there is no dispute that the Inspectors did not knock on the front door of the Clarks’ home in an attempt to request consent to conduct the inspection. Rather, the Inspectors intruded a significant distance upon the Clarks’ property and were observed by Mr. Clark while looking out a side window – at the time he first observed them, the Inspectors were on the driveway area near the garage. This was a considerable distance beyond the intersection of the Clarks front sidewalk (which leads to their front door) with the driveway.

The distance that the Inspectors penetrated onto the Clarks’ property is demonstrated by the photos that they took and submitted with the NOV. Copies of most of those photos are attached hereto.<sup>1</sup> (See Exhibit 1, Photos Nos. 1 – 15). All of the attached photos, except for Photo #16, appear to have been taken while on the Clarks’ property. As can be seen from those photos, all were taken from the area near the Clarks’ garage (*i.e.*, the rear of the driveway) – which is far beyond the intersection of the Clarks’ front sidewalk with the driveway. Consistent with the ruling in *Commonwealth of Virginia v. Henderson*, 2013 WL 431720 (Va.App.), the Inspectors’ conduct violated the Fourth Amendment because they “clearly exceeded the implied consent doctrine of *Robinson* by deviating from the invited path to the front door.” *Id.* at 6.<sup>2</sup>

Previously, Fairfax County has argued that the Inspectors’ presence on the Clarks’ property was permissible under the “plain view” doctrine. However, as the U.S. Supreme Court made clear in *Horton v. California*, 496 U.S. 128, 136 (1990), in order to be permissible under

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<sup>1</sup> Photos 17 – 19 are not attached because the Inspectors do not appear to have been on the Clarks’ property when they were taken.

<sup>2</sup> Because the *Henderson* decision is an unpublished opinion, a copy is attached hereto. See Exhibit 2.

the plain view doctrine, “the officer must be lawfully in a position to view and seize the item.” In this case, the Inspectors had entered onto the Clarks’ property far beyond the distance necessary to access the front door on the Clarks’ home. Having decided to bypass the front door, having no inspection warrant and possessing no consent from the Clarks, the Inspectors were illegally present on the Clarks’ property in violation of the Fourth Amendment. Accordingly, the evidence resulting from their illegal search must be suppressed and the NOV dismissed.

**II. THE NOV FAILED TO PROVIDE THE CLARKS WITH SUFFICIENT NOTICE OF THE ALLEGED VIOLATIONS AND OF THE ACTIONS NEEDED TO CORRECT THEM, THUS VIOLATING THE CLARKS’ DUE PROCESS RIGHTS.**

In addition to violating the Clarks’ Fourth Amendment rights, the NOV issued to the Clarks is defective because it fails to provide clear and specific notice of the deficient conditions giving rise to the alleged violations and of the corrective actions needed to remedy the alleged violations. Moreover, in several instances, the NOV is overbroad because it notes as a violation conditions that do not violate the Virginia Maintenance Code – or inaccurately describes the scope of the alleged violations.

The Code Investigation Handbook of the Fairfax County Department of Code Compliance provides that any Notice of Violation shall include the “location of these violation (*sic*) on the property [and] the remedy to comply with all violations . . .” (Code Investigation Handbook, p. 29, see attached). (Exhibit 3). This is consistent with the procedural due process protections provided by the U.S. Constitution. *See Mullane v. Central Hanover bank & Trust Co.*, 339 U.S. 306, 314 (1950). As set forth below, the NOV fails to satisfy procedural due process standards, as well as the requirements of the Department of Code Compliance, because it

does not provide the Clarks with sufficient and specific information about the alleged violations and the proposed remedies for those conditions.

Accordingly, even if the Board determines that the Inspectors' entry onto the Clarks' property was lawful, which the Clarks submit that it was not, the action of the Fairfax County Board of Building Code Appeals ("BBCA") upholding the NOV should be reversed and the NOV dismissed.

**Violation No. 1: Rodent Harborage VMC 302.5**

The NOV instructs the Clarks to "Repair the structures to keep out all animals" and identifies the location of the violation as "The single family dwelling and garage." (NOV, p. 2). In the informal fact-finding conference, the Inspectors of the Department of Code Compliance ("DCC") stated that this violation was "for a hole in the siding on the gable end of the house that has the meter base and is to the right of the upper window." (Review Board Staff Document ("SD"), p. 2). At the fact-finding conference, the Inspectors did not identify any defect in the garage that needed to be repaired.

The cited section of the VMC, Section 302.5, addresses only rodents. However, the NOV addresses "all animals." Accordingly, the NOV is overbroad because it is not limited to rodents. For this reason alone, this violation is defective and should be dismissed.

In addition, this violation should be dismissed because it failed to provide clear notice of the specific structural problem that needed to be remedied. The NOV notes the location of the violation as being the "single family dwelling and garage." It did not, however, provide any indication of the specific areas of the house or the garage where such problems existed. Rather, it instructed the Clarks to "repair the structures [i.e., the single family dwelling and garage] to

keep out all animals.” However, at the fact-finding conference, the Inspectors did not indicate that the violation had anything to do with the garage. Rather, they indicated that the violation was for the specific area of the Clarks’ home discussed above, something which could have been – but was not stated in the NOV.

Moreover, at the fact-finding conference, the Inspectors did not indicate that they had any evidence that this hole was being used by rodents. Although Mr. Clark told them that he had blocked this hole to prevent it from being used by birds, this hardly constitutes an admission of “rodent infestation or harborage.”

Because the NOV failed to identify the specific structural condition(s) that needed to be remedied – and because it incorrectly identified the garage as one of the structures that needed to be corrected in this regard – the NOV’s discussion of this violation failed to provide adequate notice of the alleged violation to the Clarks and of the remedial action necessary to correct the alleged violation. Accordingly, this violation should be dismissed.

#### **Violation No. 2: Accessory Structures VMC 302.7**

The NOV instructs the Clarks to “Repair all accessory structures, the detached garage and all fences on the property that are in disrepair.” It identifies the location of the violation as “All accessory structures on the property.” (NOV, p. 2). However, in the informal fact-finding conference the DCC Inspectors did not indicate that this violation applied to “all accessory structures on the property.” Rather, they stated that this violation was for “a section of fence on the ground on the right side (when facing the front) of the garage and for pickets in the section of the fence on the left side of the garage either missing or in disrepair.” (SD, p. 2).

This violation should be dismissed because the NOV failed to provide clear notice of the specific structural problem that constituted the alleged violation and of the remedial action necessary to correct it. The NOV gave only a general description of the structural problem and provided no specific indication of the structural problem(s) to be addressed by the Clarks. Moreover, at the informal fact-finding conference, the Inspectors did not indicate that the violation had anything to do with the garage itself. Rather, they stated that the violation was for the fence near the garage.

Because the NOV failed to identify the specific structural condition that constituted the alleged violation and of the remedial action necessary to correct it – and because the NOV incorrectly identified the garage as one of the structures that needed to be corrected in this regard – the NOV’s discussion of this violation failed to provide adequate notice of the violation to the Clarks. Accordingly, this violation should be dismissed.

**Violation No. 3, Exterior Structure General VMC 304.1**

The NOV instructs the Clarks to “Repair all holes on the house and garage on the property. Repair and or replace all untreated rotten exterior wood on the house and garage.” It identifies the location as “The dwelling and garage on the property.” (NOV, p. 2). In contrast, at the informal fact-finding conference, the Inspectors indicated that the cited violation was “for a hole in the right side (when facing the front) of the garage. In addition, this cited violation is for the following missing or deteriorated components: fascia board on the front of the house; trim on the door frame around the garage door; window sill on the upper window of the gable end of the house that has the meter base; siding under the front door sill; side trim and sills on both front dormer windows; and, soffit on back dormer (pulled away and hole).” (SD, p. 2).

The detail provided by the Inspectors at the informal fact-finding conference demonstrates the inadequacy of the notice provided to the Clarks in the NOV. The notice contained in the NOV is very general and lacks the specificity necessary to put the Clarks on notice as to the alleged violations and the remedial actions required to address them. The information provided by the Inspectors at the fact-finding conference should have been contained in the NOV, which, by virtue of its lack of specificity, effectively required the Clarks to guess as to the specific violations that were being alleged and the corrective actions necessary to address them.

Because the NOV failed to provide the Clarks with adequate notice of the specific nature and location of the alleged violations and of the remedial actions necessary to correct them – this violation should be dismissed.

**Violation No. 4, Window, Skylight & Door Frames VMC 304.13**

The NOV instructs the Clarks to “Repair and or repair [we assume that this is a typographical error and that it should read “Repair and or replace”] the frames on all windows on the garage and single family dwelling.” (Emphasis added). (NOV, p. 2). The location is identified as “All windows on the single family dwelling and the garage.” (NOV, p. 2). However, at the informal fact-finding conference, the Inspectors stated that this violation was for the same conditions as specified under the cited violation for VMC § 304.1. (SD, p. 2).

Like the other violations cited in the NOV, this violation fails to provide adequate notice to the Clarks of the alleged violations and of the remedial actions necessary to correct them. First, the NOV says nothing at all about the need to take any remedial action on door frames or other areas; rather, it is limited to window frames. However, in the fact-finding conference, the

Inspectors stated that this violation applied to the fascia board on the front of the house, the trim on the door frame around the garage door, and the siding under the front door – in addition to several windows. By failing to give notice that these other conditions needed to be corrected, this violation is defective.

Second, this violation is overbroad because the NOV states that the frames on all windows must be repaired or replaced. However, at the informal fact-finding conference, the Inspectors made clear that not they did not mean that the frames on all windows must be repaired or replaced but only those where there were problems. (See SD, p. 2).

For the above reasons, the NOV failed to give adequate and clear notice to the Clarks of the alleged violations and of the corrective actions that were required to address them. Accordingly, this violation should be dismissed.

#### **Violation No. 5, Protective Treatment VMC 304.2**

The NOV instructs the Clarks to “Scrape and paint the entire dwelling and garage.” The location is identified as the “garage and single family dwelling on the property.” (NOV, p. 3). However, at the informal fact-finding conference, the Inspectors stated that the corrective action was limited to those areas on the exterior wooden parts that needed to be scraped and painted.

This violation is defective because it fails to provide the Clarks with sufficient notice as to the areas that need to be scraped and painted. The NOV indicates that the entire house and garage need to be scraped and painted but at the fact-finding conference, the Inspectors indicated that only those areas that needed to be scraped and painted should be scraped and painted.

More importantly, however, the violation stated in the NOV goes beyond the scope of the cited VMC section -- § 304.2. That section requires that “Exterior wood surfaces, other than

**decay-resistant woods**, shall be protected from the elements and decay by painting or other protective covering or treatment.” (Emphasis added). Although the Inspectors never inquired about the composition of the siding on the Clark’s residence, it is comprised of decay-resistant cedar siding. As such, per the provisions of § 304.2, it does not need to be painted or otherwise protected from the elements. Neither did the Inspectors inquire about the siding on the Clarks’ garage, which consists of asbestos mixed with concrete. Thus, it is not an “exterior wood surface” and is not covered by any painting requirement imposed by § 304.2 with respect to wood surfaces. Moreover, since it consists of asbestos, the Clarks believe that it would be dangerous to scrape it because such scraping might create airborne asbestos particles, which would constitute a health hazard to anyone doing such scraping and potentially to others as well.

For the above reasons, we submit that Violation No. 5 is defective and should be dismissed.

**Violation No. 6, VMC § 304.6**

The NOV instructs the Clarks to “Repair all holes in the house and garage and make the structures weatherproof and so they keep out animals.” The NOV identifies the location as the “single family dwelling and garage on the property.” (NOV, p. 3). In the informal fact-finding conference, the Inspectors identified this violation as being “for the same exterior walls conditions specified under the cited violation for VMC § 304.1.” (SD, p. 3).

For the same reasons as specified with respect to Violation No. 3 above, we believe that this violation is defective and should be dismissed. It fails to identify the specific location of the alleged violations and of the remedial actions necessary to correct those conditions. The level of

detail provided by the Inspectors at the fact-finding conference should have been contained in the NOV – but was not.

Not only is this violation vague as to the specific violations, it also is vague in terms of at least part of the specified remedy – to make the structures waterproof. It does not specify the steps necessary to make the structures waterproof – and, to the extent that the NOV means painting as a means of waterproofing, this is not valid for the reasons discussed with respect to Violation No. 5.

In addition, this violation is defective because it is overbroad to the extent that it requires that “all animals” be kept out. The only VMC section cited in the NOV that pertains to animals is § 302.5 which addresses the issue of rodent harborage and infestation. To the extent that the NOV requires that the Clarks make the structures on their property impervious to all animals, it has gone beyond the limits of the cited sections of the VMC.

For the above reasons, we submit that this violation is defective and should be dismissed.

### CONCLUSION

For the above reasons, as well as those set forth in the Clarks’ original appeal, we submit that the Notice of Violations should be dismissed and the decision of the Fairfax BBCA reversed. Alternatively, the period of time provided for correction of the alleged violations should be increased to provide a reasonable time period for so doing.

Respectfully submitted,

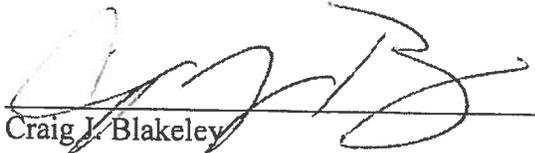
**JONATHAN & CAROLYN CLARK**

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**CERTIFICATE OF SERVICE**

I certify that the foregoing “Additional Argument of Appellants Concerning Entry Onto to the Clarks’ Property in Violation of the Fourth Amendment to the U.S. Constitution and Challenge to the Validity of the NOV in View of the Information Disclosed at the Informal Fact-Finding Conference,” and the accompanying exhibits, was served by email this 6<sup>th</sup> day of May, 2015, on Paul Emerick, Esq., Assistant County Attorney, Office of the Fairfax County Attorney at [paul.emerick@fairfaxcounty.gov](mailto:paul.emerick@fairfaxcounty.gov).

  
Craig J. Blakeley

**EXHIBIT 1**

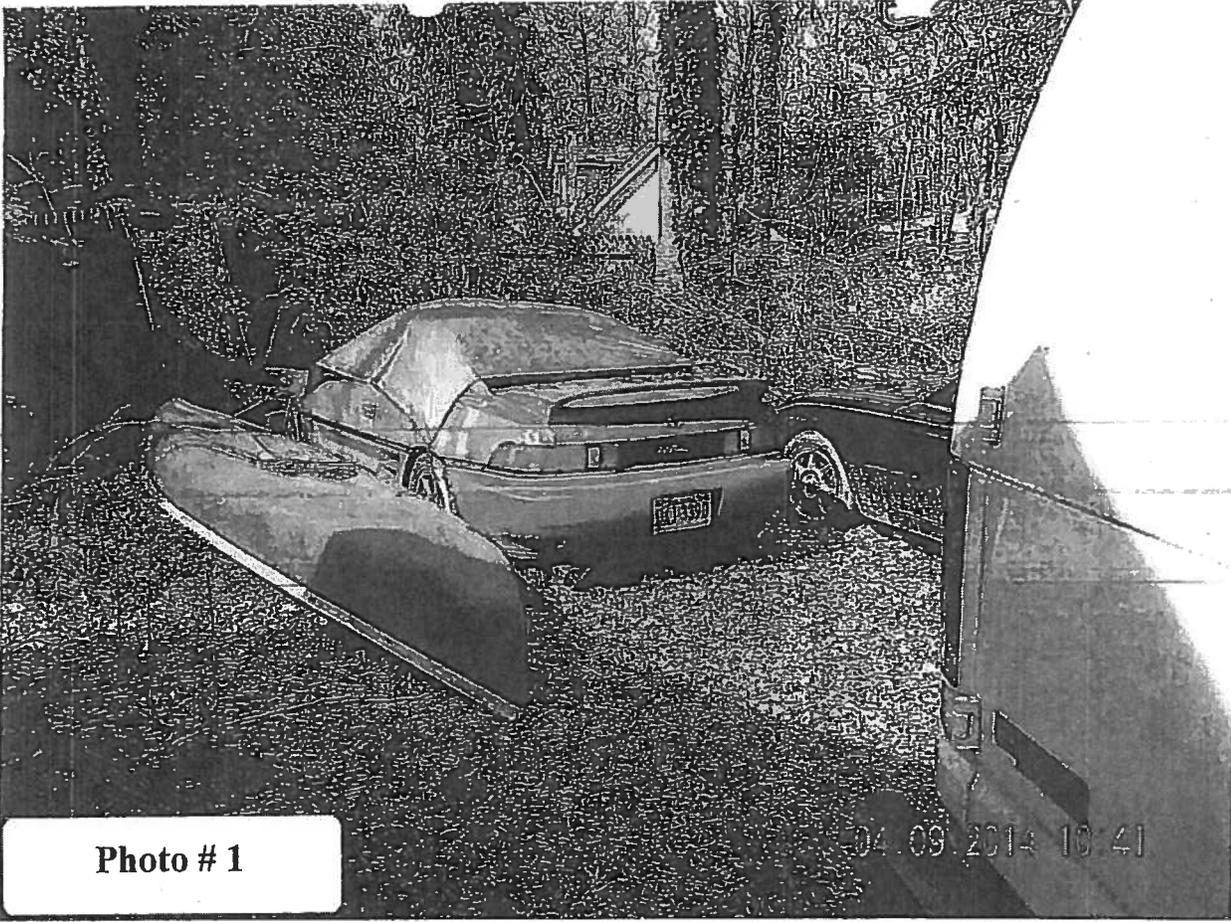
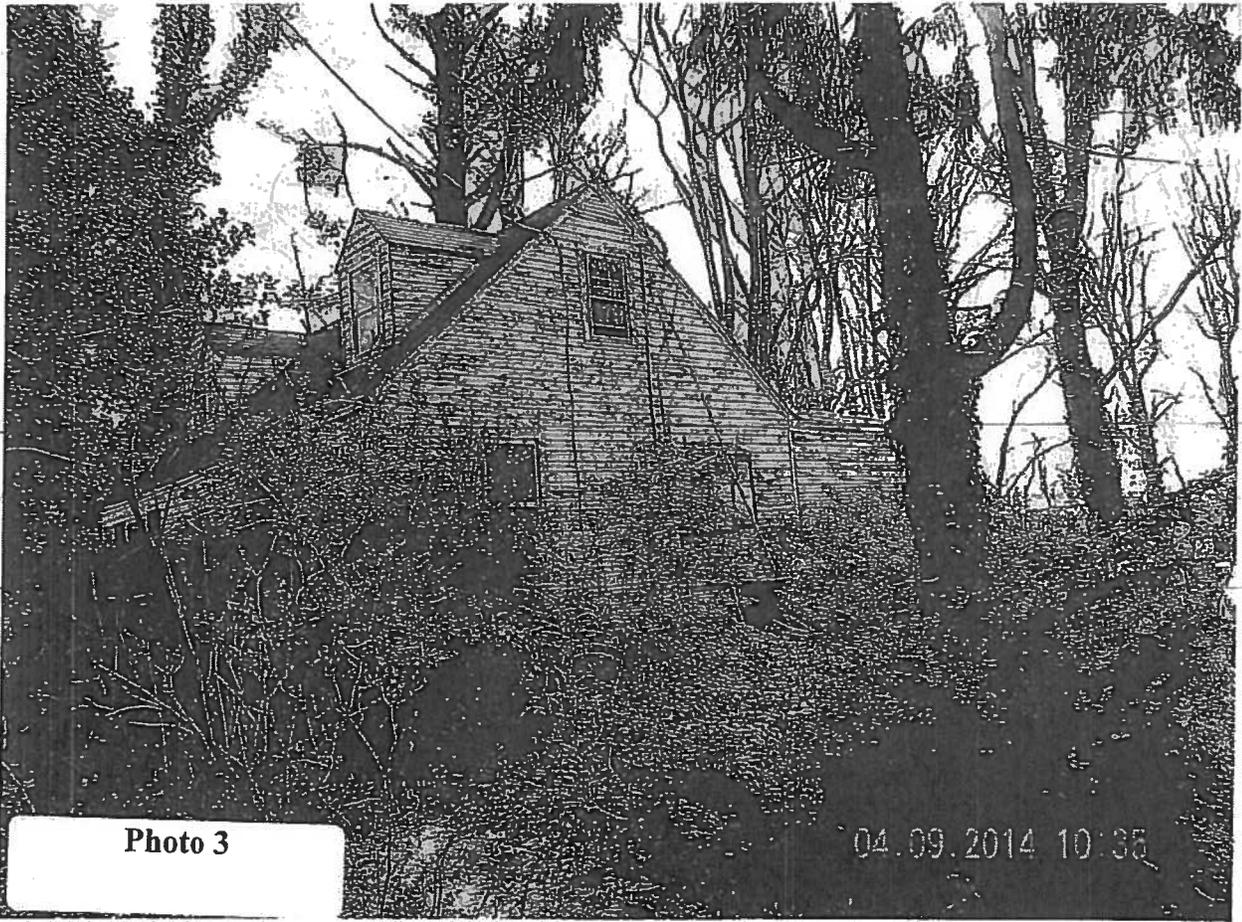


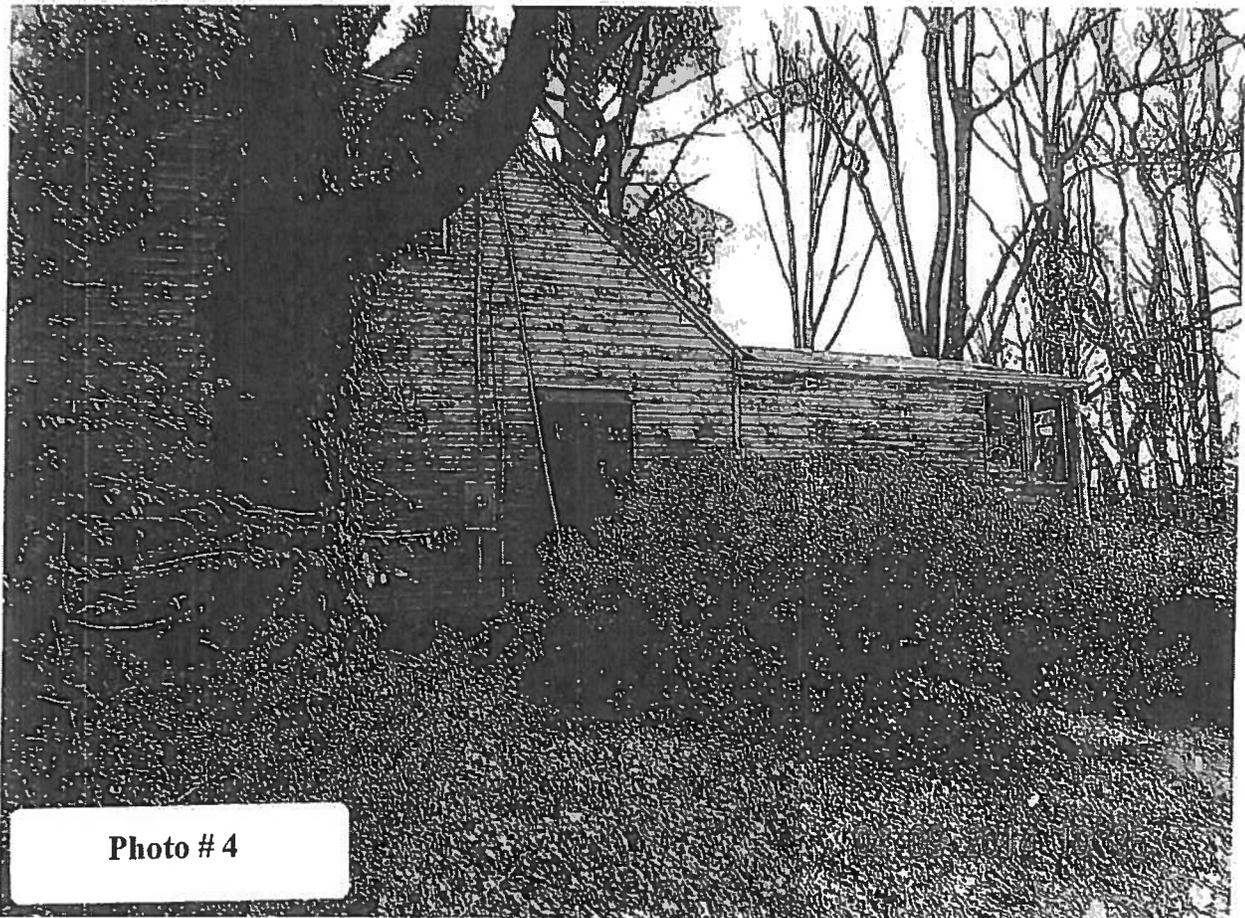
Photo # 1



Photo #2



**Photo 3**



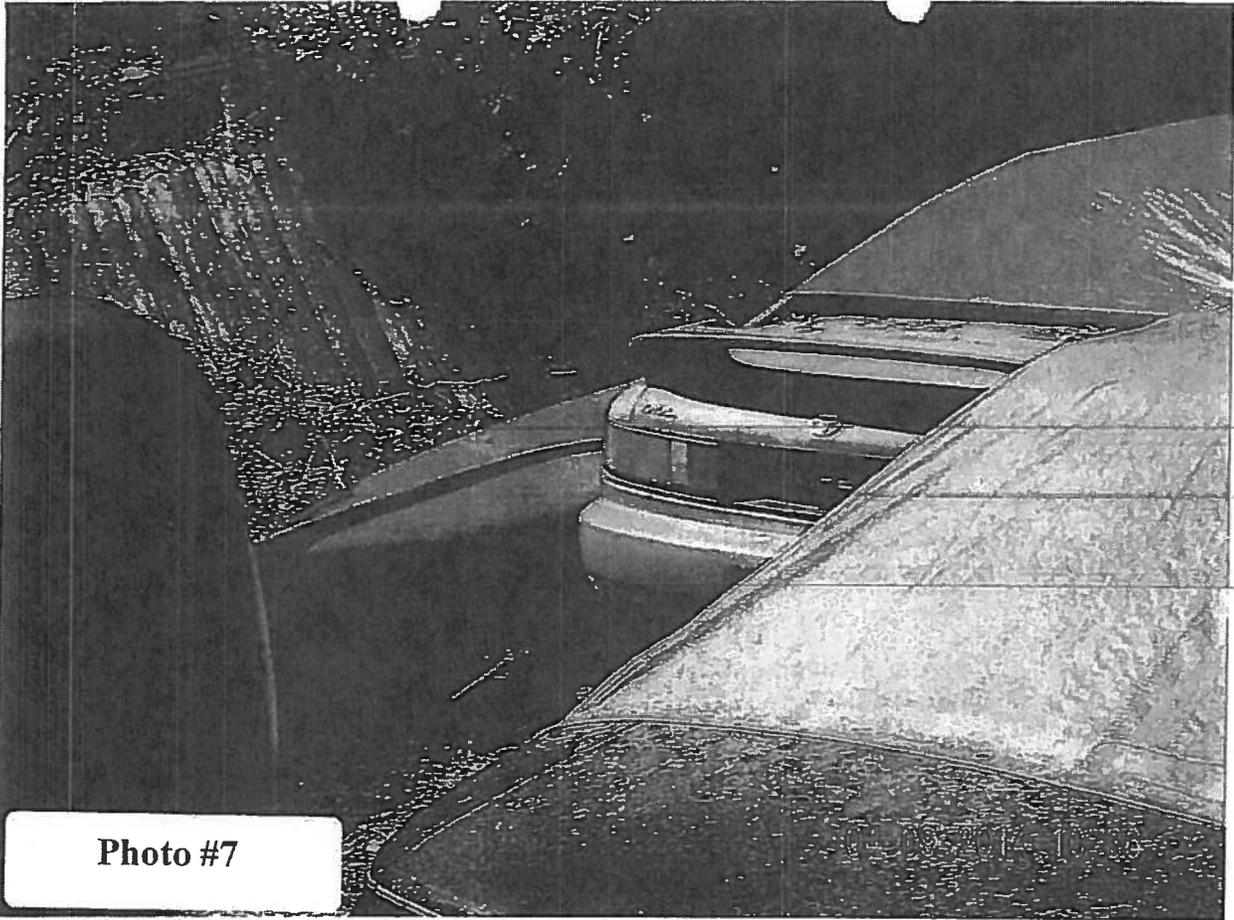
**Photo # 4**



Photo # 5



Photo # 6



**Photo #7**



**Photo #8**

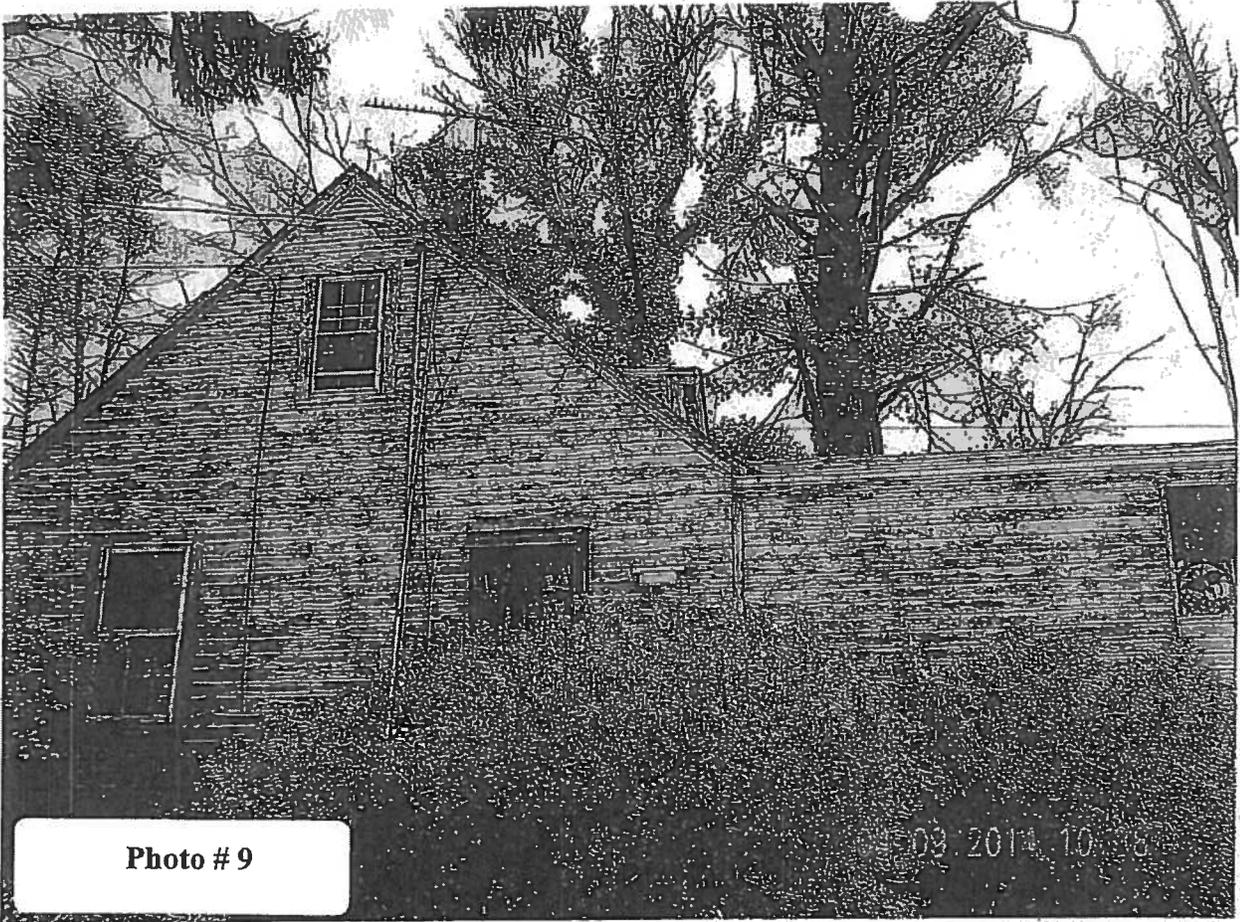


Photo # 9

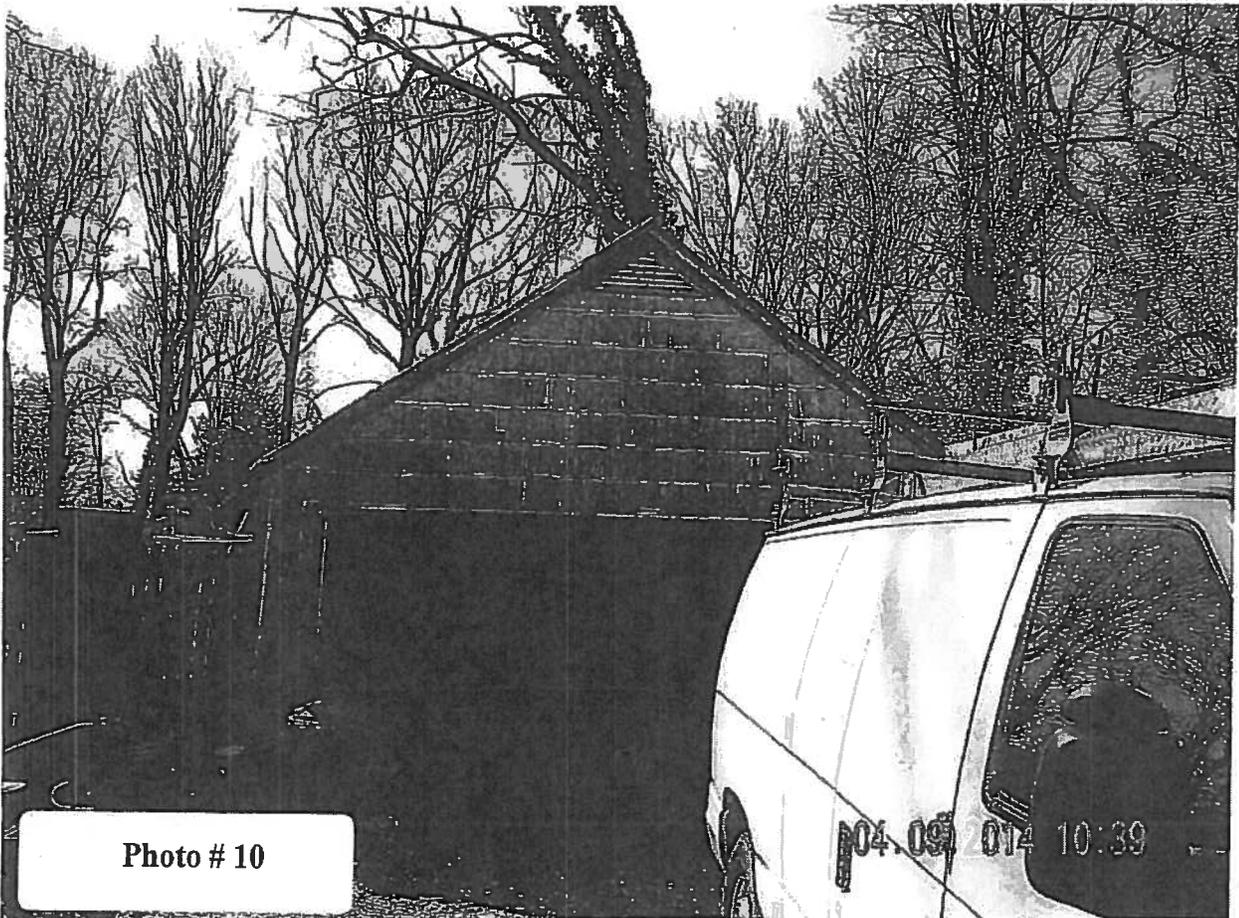


Photo # 10



Photo # 11



Photo # 12

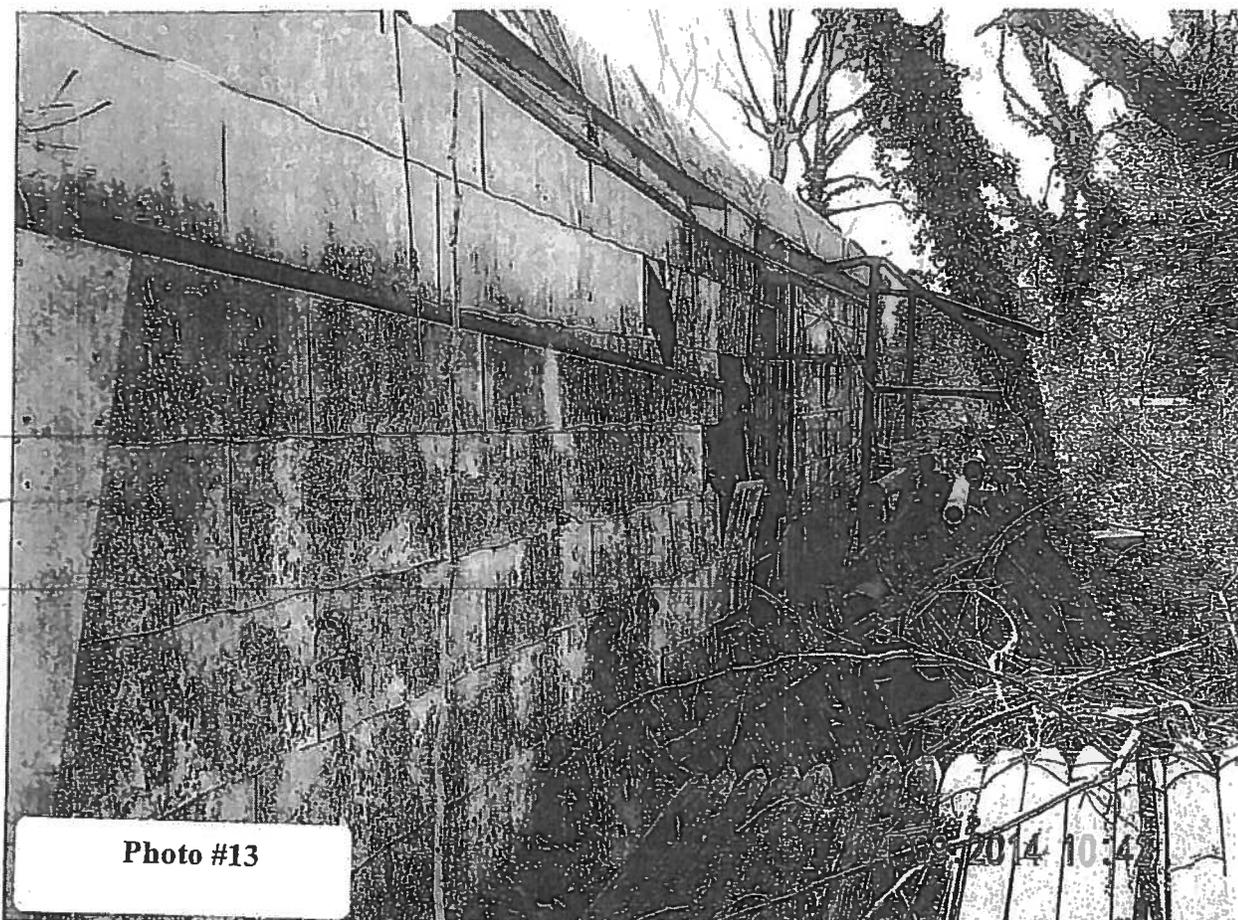


Photo #13

04-09-2014 10:47



Photo #14

04-09-2014 10:42

Photo #15

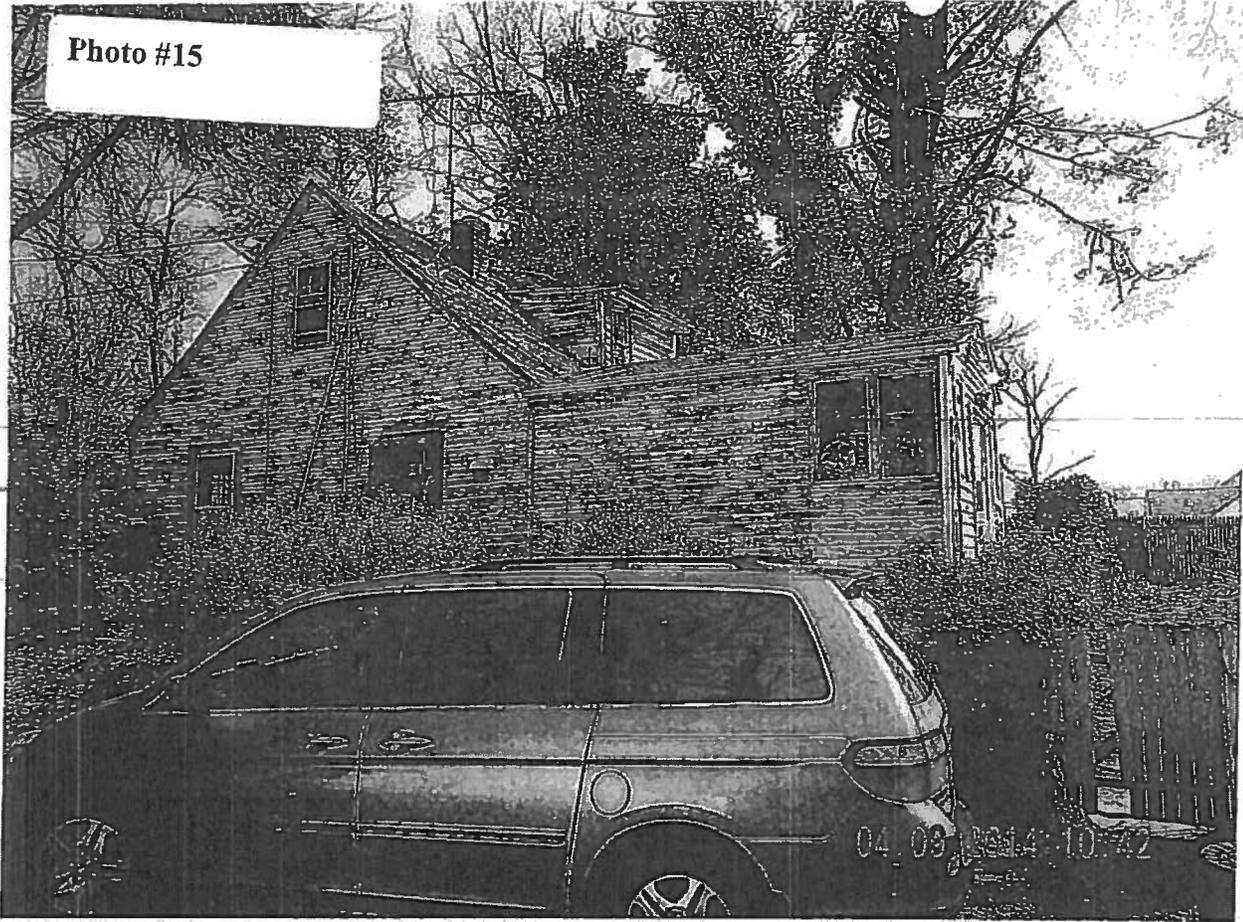
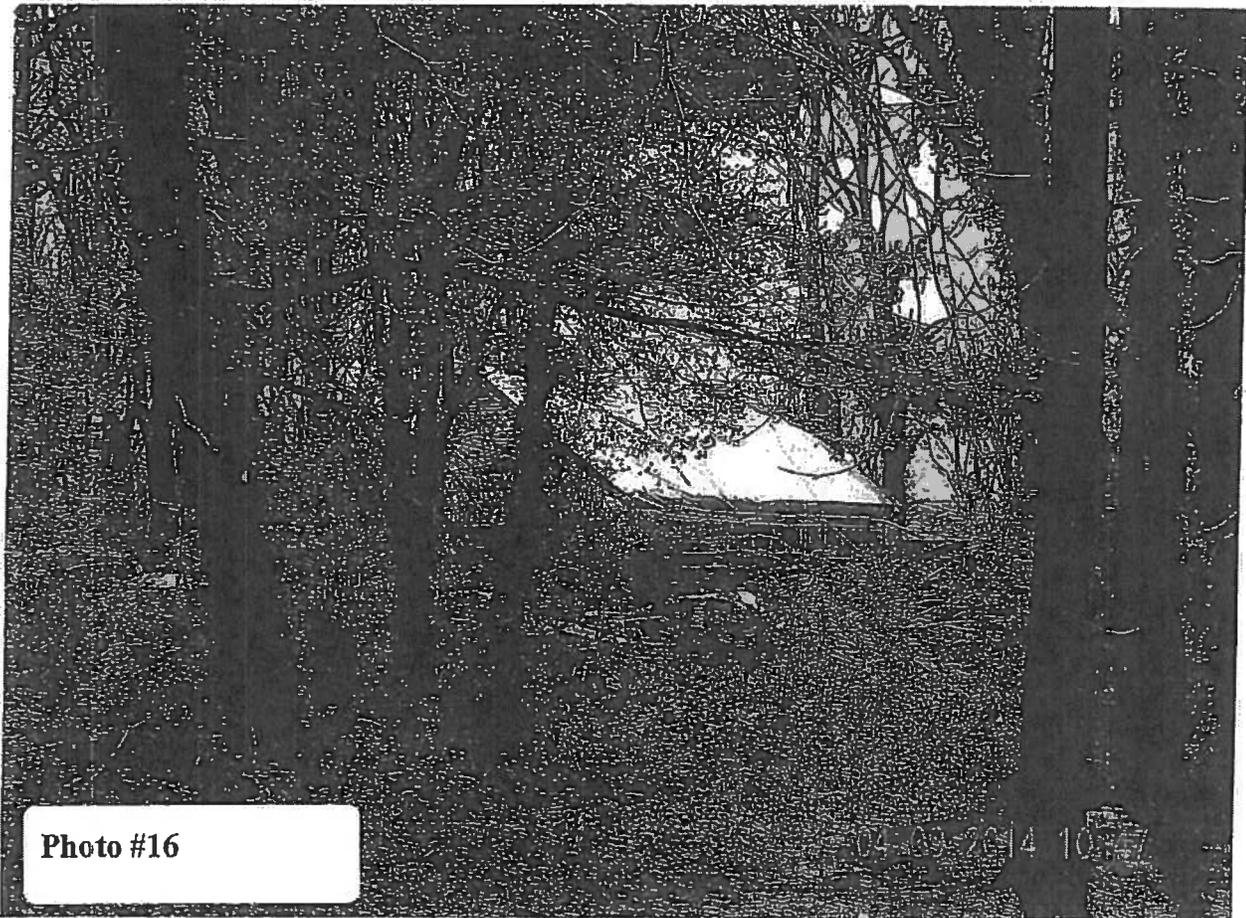


Photo #16



**EXHIBIT 2**

Not Reported in S.E.2d, 2013 WL 431720 (Va.App.)  
(Cite as: 2013 WL 431720 (Va.App.))

**C**

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT  
RULES BEFORE CITING.

Court of Appeals of Virginia.  
COMMONWEALTH of Virginia  
v.  
William Wade HENDERSON, III.

Record No. 1665-12-3.  
Feb. 5, 2013.

From the Circuit Court of Patrick County, David V.  
Williams, Judge.

Katherine Quinlan Adelfio, Assistant Attorney  
General (Kenneth T. Cuccinelli, II, Attorney Gener-  
al, on brief), for appellant.

Christina L. Slate, Assistant Public Defender  
(Office of the Public Defender, on brief), for ap-  
pellee.

Present: ELDER, HUMPHREYS and HUFF, JJ.

MEMORANDUM OPINION<sup>FN\*</sup>

FN\* Pursuant to Code § 17.1-413, this  
opinion is not designated for publication.

HUMPHREYS, Judge.

\*1 The Commonwealth of Virginia appeals the  
judgment of the trial court in granting William  
Wade Henderson's ("Henderson") motion to sup-  
press any evidence obtained pursuant to the war-  
rantless search of Henderson's **curtilage** on  
September 17, 2011. The Commonwealth argues  
that the trial court erred in suppressing the evidence  
because the investigating officer had legitimate  
concerns for her safety, as well as probable cause  
and exigent circumstances, when she inspected a  
suspicious van and its surrounding area, and be-

cause Henderson consented to the officer's search  
in the **curtilage** of his home. Finding no error, we  
affirm the judgment of the trial court.

## I. BACKGROUND

"Upon appeal from a trial court's ruling on a  
motion to suppress, we must view the evidence in  
the light most favorable to the prevailing party ...  
granting to him all reasonable inferences fairly de-  
ducible from the evidence." *Commonwealth v.*  
*Spencer*, 21 Va.App. 156, 159, 462 S.E.2d 899, 901  
(1995). In the light most favorable to Henderson,  
the evidence established the following.

Deputy Molly Motley of Pittsylvania County  
traveled to Henderson's property in Patrick County  
to investigate several heat pump thefts that oc-  
curred in Pittsylvania County. The thefts involved  
heat pumps belonging to customers of Jack Holmes,  
for whom Henderson had worked. Henderson alone  
had performed services as Holmes' employee for  
several victims reporting stolen heat pumps.

Deputy Motley testified that, as she approached  
Henderson's mobile home in her patrol car, she saw  
a white van. However, Henderson testified that the  
white van in the backyard was not visible to  
someone driving towards the trailer on the drive-  
way. Deputy Motley parked her patrol car behind  
three other vehicles that were in front of the trailer.  
Deputy Motley walked around her car, twelve to  
fifteen feet to a point where she could see the van  
and at that point she also saw a heat pump sitting  
next to the van. Deputy Motley was interested in  
the van because of reported break-ins associated  
with an older white work van with a ladder rack,  
and it "also kind of heightened [her] awareness, as  
far as officer safety." Deputy Motley passed the  
front door of the mobile home and went around to  
the back to the location where the van was parked.  
The back doors of the van were open, and multiple  
heat pump units were sitting outside the van and ad-  
jacent to the mobile home. At that point, Deputy  
Motley took twenty pictures of the van and the heat

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(Cite as: 2013 WL 431720 (Va.App.))

pump units. Some of the pictures were close up to the heat pumps and the van, others were from a distance.

After taking the first set of pictures, Deputy Motley knocked on the front door and Henderson let her in. Deputy Motley asked Henderson what he could tell her about all the air conditioners out back. Henderson said that he was turning some of them in "for Xmas bonus, some of them not." Deputy Motley explained that she was looking into air conditioner thefts, all of which involved units that had been serviced by J. Holmes. Deputy Motley gave Henderson her phone number and said she would appreciate any help he could give. The conversation continued:

\*2 Deputy Motley: ... and if you don't mind I'm going back here and take a few pictures of the air condition units and all that ok?

Henderson: You know I mean I wish you didn't cause Jack[']s going to know and it's going to be bull shit behind it.

Deputy Motley: We're not talking, this has nothing to do with Jack. You know Jack has not filed a complaint I mean.

Henderson: I mean the best thing to do on the [sic] now you see is get a number.

Deputy Motley: Uh hum.

Henderson: Cause you can look at a picture and say well that is it.

Deputy Motley: That's all the invoices there. Uh but anyway if you don't mind I'll just take a few pictures of like I say this is just for our records, it's not as far as I'm concerned Jack Holmes, he's not filed a complaint. These home owners that have had air conditioners stolen filed the complaint so uh if it's not their air conditioners it's not anything.

Henderson: Yeah

Deputy Motley: You know?

Henderson: Yeah

Deputy Motley: Yeah not anything to do with Jack Holmes so

Henderson:—when we was turning them in

Deputy Motley: Uh hum.

Henderson: And we were suppose[d] to be splitting, I'm still trying to get my cut of that.

Henderson: But uh, Jack had serial numbers for every one of them.

Deputy Motley: Right. Yeah that is what I'm saying I mean you know I'm just trying to take pictures, if uh that's not necessarily we just trying to follow up leads and stuff so uh have you been doing installs very long or

Henderson: Yeah. What do you do take the numbers and run them back with what Jack[']s got?

Deputy Motley: No not well

Henderson: Just going to show them to the home owners?

Deputy Motley: It depends on where they bought them, whoever has original records, you know we just compare it to that. Probably just I mean at this point we would probably just ask the home owners cause they would have to get the serial number to get their insurance....

When Deputy Motley exited Henderson's home the recorded conversation ended and she began taking a second set of pictures of the van and air conditioner or heat pump units, including some close up pictures of the serial numbers of the units. Henderson walked outside with Deputy Motley and saw her taking the pictures. Deputy Motley testified

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on cross-examination that Henderson never told her that she could take any pictures.

On Henderson's motion to suppress the evidence, the trial court found that while probable cause was present, exigent circumstances justifying a warrantless search were lacking, as "Deputy Motley could have radioed for backup in order to obtain a search warrant" to ensure evidence was preserved. The trial court found that there was no express consent because Henderson replied "I wish you didn't" when Deputy Motley asked to take pictures. The trial court further found that because Deputy Motley had taken pictures before speaking to Henderson, "any indicia that he consented to further photos would not be consent that meets the standard of being 'freely and voluntarily given.' *Deer v. Commonwealth*, 17 Va.App. 730 (1994)." Finally, the court found that the plain view doctrine did not permit the taking of the photos because Deputy Motley did not have "a lawful right to access the units or the van because of their location on the property," as her approach to the van and the units "exceeded the scope of the implied consent doctrine." The court granted Henderson's motion to suppress.

## II. ANALYSIS

\*3 In reviewing a suppression motion on appeal, we defer to the trial court's findings of historical fact, but we review *de novo* the ultimate question of whether the officer violated the **Fourth Amendment**. *Slayton v. Commonwealth*, 41 Va.App. 101, 105, 582 S.E.2d 448, 449–50 (2003).

" 'The exclusionary rule operates ... against evidence seized and information acquired during an unlawful search or seizure ... [and] against derivative evidence discovered because of the unlawful act.' " *Gilpin v. Commonwealth*, 26 Va.App. 105, 112, 493 S.E.2d 393, 397 (1997) (quoting *Watson v. Commonwealth*, 19 Va.App. 659, 663, 454 S.E.2d 358, 360 (1995)). "Thus, evidence must be suppressed when it is 'come at by exploitation of [the initial] illegality rather than by means sufficiently distinguishable to be purged of the primary taint.' " *Id.* (quoting *Hall v. Commonwealth*, 22

Va.App. 226, 229, 468 S.E.2d 693, 695 (1996)). To trigger the exclusionary rule, "the challenged 'police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.' " *Washington v. Commonwealth*, 60 Va.App. 427, 436, 728 S.E.2d 521, 525 (2012) (quoting *Herring v. United States*, 555 U.S. 135, 144 (2009)).

"[T]he privacy interest in one's home has few equals," and the **Fourth Amendment** serves to protect that interest. *Kyer v. Commonwealth*, 45 Va.App. 473, 480, 612 S.E.2d 213, 217 (2005). Additionally, the " **curtilage** area immediately surrounding a private house has long been given protection as a place where the occupants have a reasonable and legitimate expectation of privacy that society is prepared to accept." *Dow Chem. Co. v. United States*, 476 U.S. 227, 235 (1986). " 'The **curtilage** of a dwelling house is a space necessary and convenient, habitually used for family purposes and the carrying on of domestic employment; the yard, garden or field which is near to and used in connection with the dwelling.' " *Patler v. Commonwealth*, 211 Va. 448, 451, 177 S.E.2d 618, 620 (1970) (quoting *Bare v. Commonwealth*, 122 Va. 783, 795, 94 S.E. 168, 172 (1917)).

The Commonwealth withdrew its first assignment of error concerning Henderson's standing to object to the photographs taken at 1008 Mountain View Church Road, where Henderson lived.

### A. Officer Safety

The Commonwealth's second assignment of error is that the trial court erred in ruling that "Deputy Molly Motley did not have legitimate concerns for officer safety when she inspected the suspicious van and its surrounding area." The Commonwealth references two pages in the record where this assignment of error is preserved. The first cite is to Deputy Motley's testimony about seeing the white van next to Henderson's residence:

A. I was parked in line with the trailer, with the

mobile home, and when I saw the van, there were a couple of things. One: I was interested in it, as far as these break-ins. It also kind of heightened my awareness, as far as officer safety, so I stepped around my car. I probably walked twelve or fifteen feet and at that point I could see the van and a heat pump sitting next to it.

\*4 On the second page cited by the Commonwealth, *Henderson's* counsel addressed the above quoted testimony in argument on the motion:

Furthermore, your honor, the Commonwealth argues exigent circumstances. Deputy Motley, an officer not from Patrick County, went alone by choice. She certainly could have radioed for back-up, and I'm sure Patrick County would have been happy to oblige at that time. She mentioned something about officer safety, but doesn't give any elements or any evidence whatsoever as to what caused her to have any concerns. There was simply nothing in evidence that would give rise to exigent circumstances.

These are the only references to "officer safety" issues in the record. The Commonwealth points to no other facts or argument below in support of its argument on appeal that exigent circumstances justified a warrantless search. The trial court did not address "officer safety" in its ruling rejecting the Commonwealth's exigent circumstances argument, as the Commonwealth asserts in its assignment of error. Furthermore, the Commonwealth now argues for the first time on appeal that Deputy Motley was justified in proceeding to the curtilage to investigate the van under the "protective sweep" doctrine.<sup>FN1</sup>

FN1. In the trial court, the Commonwealth only argued that the search was lawful and constitutional based on consent, the "plain view" doctrine, and probable cause and exigent circumstances.

Rule 5A:18 states that "No ruling of the trial court ... will be considered as a basis for reversal

unless an objection was stated with reasonable certainty at the time of the ruling, except for good cause shown or to enable the Court of Appeals to attain the ends of justice." Rule 5A:18

places the parties on notice that they must give the trial court the first opportunity to rule on disputed evidentiary and procedural questions. The purpose of this rule is to allow correction of an error if possible during the trial, thereby avoiding the necessity of mistrials and reversals. To hold otherwise would invite parties to remain silent at trial, possibly resulting in the trial court committing needless error.

*Gardner v. Commonwealth*, 3 Va.App. 418, 423, 350 S.E.2d 229, 232 (1986). The Commonwealth did not argue before the trial court that Deputy Motley's investigation of the van and search of the heat pumps were constitutionally valid under the protective sweep doctrine<sup>FN2</sup>; thus, the trial court did not have an opportunity to rule on the issue. Therefore, pursuant to Rule 5A:18, we will not address this assignment of error on appeal.

FN2. "A 'protective sweep' is a *quick and limited* search of premises, *incident to an arrest* and conducted to protect the safety of police officers or others. *It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding.*" *Maryland v. Buie*, 494 U.S. 325, 327 (1990) (emphasis added).

#### *B. Exigent Circumstances*

The Commonwealth's third assignment of error is that the trial court erred in ruling that "Deputy Molly Motley did not have sufficient probable cause and exigent circumstances even after viewing certain items in plain view to justify taking some initial photographs of the general setup in the yard."

The trial court found, "In the present case probable cause is present, but exigent circumstances is lacking." The trial court explained that exigent cir-

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cumstances did not exist because “Deputy Motley could have radioed for backup in order to obtain a search warrant. This would ensure that the evidence [would not] have been destroyed or removed and allowed a lawful search of the machine parts.” The trial court also found that the plain view doctrine did not permit the taking of the photos because “Deputy Motley did not have a lawful right of access to the units or the van because of their location on the property.”

\*5 We need not consider whether the trial court was correct in concluding that the mere presence of a white van on Henderson's property was sufficient to provide probable cause for a search because this record supports the trial court's finding that no exigent circumstances existed that would justify a warrantless search. Deputy Motley only saw the heat pumps that bolstered a probable cause finding *after* violating Henderson's **Fourth Amendment** rights by deviating from the path to the front door and conducting a warrantless search of the **curtilage** behind the mobile home. “It is a cardinal principle that ‘searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the **Fourth Amendment**—subject only to a few specifically established and well-delineated exceptions.’ “ *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). “The ‘plain view doctrine’ is an exception to the general rule that warrantless searches and seizures are presumptively unreasonable.” *Harris v. Commonwealth*, 241 Va. 146, 152, 400 S.E.2d 191, 195 (1991). “The theory of the plain view doctrine is that an individual has no reasonable expectation of privacy in items that are in plain view.” *Hamlin v. Commonwealth*, 33 Va.App. 494, 502, 534 S.E.2d 363, 366 (2000). A search is valid if the “plain view” doctrine would have sustained a seizure of the property. *Arizona v. Hicks*, 480 U.S. 321, 326 (1987). “It is, of course, an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the **Fourth Amendment** in arriving at the place from which the

evidence could be plainly viewed.” *Horton v. California*, 496 U.S. 128, 136 (1990) (emphasis added).

In order for a seizure to be permissible under the plain view doctrine, two requirements must be met: “(a) *the officer must be lawfully in a position to view and seize the item*, [and] (b) it must be immediately apparent to the officer that the item is evidence of a crime, contraband, or otherwise subject to seizure.”

*Hamlin*, 33 Va.App. at 502, 534 S.E.2d at 366 (emphasis added) (quoting *Conway v. Commonwealth*, 12 Va.App. 711, 718, 407 S.E.2d 310, 314 (1991)).

“It is generally recognized that, absent any affirmative attempts to discourage trespassers, owners or possessors of private property impliedly consent to have members of the general public intrude upon certain, limited areas of their property.” *Robinson v. Commonwealth*, 47 Va.App. 533, 545, 625 S.E.2d 651, 657 (2006). “This invitation, where it exists, extends only to those areas of the property that would be used when approaching the residence in an ordinary attempt to speak with the occupants.” *Id.* at 546, 625 S.E.2d at 657. The homeowner has waived any reasonable expectation of privacy in areas of the **curtilage** associated with the path that a visitor could reasonably be expected to cross when approaching the front door. Thus, these areas, such as the driveway, **sidewalks**, and front porch, are generally exempted from **Fourth Amendment** protection. *Id.* “By extension, the same implied consent is extended to police officers who enter the **curtilage** and, while on the premises, restrict their conduct to those activities reasonably contemplated by the homeowner.” *Id.* “Accordingly, ‘when police enter onto private property ... and restrict their entry to places that other visitors would be expected to go, such as walkways, driveways, or porches, any observation made from these areas is permissible under the **Fourth Amendment**.’ “ *Id.* at 547, 625 S.E.2d at 657 (quoting *Trimble v. State*, 816 N.E.2d 83, 88 (Ind.Ct.App.2004)).

\*6 In this case, when Deputy Motley first saw the heat pumps her presence in the curtilage was unlawful. She testified that upon pulling into Henderson's driveway she walked twelve to fifteen feet around her car before she saw the first heat pump. Then she walked around the side of the trailer to the van and heat pumps, and took twenty pictures before going to the front door and knocking. As the trial court correctly found, Deputy Motley clearly exceeded the implied consent doctrine of *Robinson* by deviating from the invited path to the front door. The search was not permissible under the plain view doctrine as Deputy Motley was not lawfully in a position to view the heat pumps when she observed and photographed them. Therefore, the trial court was correct in concluding that Deputy Motley violated the **Fourth Amendment** prior to any supposed exigency arising.

“ ‘Evidence should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the **Fourth Amendment.**’ ” *Herring*, 555 U.S. at 143 (quoting *Illinois v. Krull*, 480 U.S. 340, 348–49 (1987)). Deputy Motley is charged with the knowledge that she needed a warrant to enter the curtilage of a person's home, absent probable cause and exigent circumstances. While the trial court found that probable cause existed, this record is devoid of facts supporting exigent circumstances prior to Deputy Motley's deviation from her lawful path to the front door. Thus, the trial court correctly granted Henderson's motion to suppress the evidence obtained in violation of Henderson's **Fourth Amendment** rights.

#### C. Consent to Search

The Commonwealth next argues that “Henderson consented to Deputy Motley's presence in his curtilage and her observation of the heat pumps.”<sup>FN3</sup>

FN3. The Commonwealth combined its argument on brief for the following two assignments of error:

The Commonwealth asserts the trial court erred in making the following rulings:

\* \* \* \* \*

IV. Henderson clearly and unambiguously indicated his desire for Deputy Molly Motley to not take any photographs when he stated, “I wish you didn't [be]cause Jack's going to know and it's [sic] going to be bull shit behind it.”

V. Henderson did not give inferred consent for Deputy Molly Motley to take any photographs when he suggested she compare serial numbers and accompanied her to take photographs without interrupting her.

Under the **Fourth** and **Fourteenth Amendments**, a search conducted without a warrant is *per se* unreasonable, subject only to a few well-delineated exceptions. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). “[O]ne of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.” *Id.* “Police officers act in full accord with the law when they ask citizens for consent. It reinforces the rule of law for the citizen to advise the police of his or her wishes and for the police to act in reliance on that understanding.” *United States v. Drayton*, 536 U.S. 194, 207 (2002). It is the prosecutor's burden to prove that consent was freely and voluntarily given. *Schneckloth*, 412 U.S. at 222. Whether or not consent to a search was voluntarily given “is a question of fact to be determined from the totality of all the circumstances.” *Id.* at 227.

“Consent to a search must be unequivocal, specific and intelligently given and it is not lightly to be inferred.” Although the consent need not be oral, mere acquiescence is not enough. Additionally, the Commonwealth bears the burden of proving that consent was in fact given, and “that burden is heavier where the alleged consent is

Not Reported in S.E.2d, 2013 WL 431720 (Va.App.)  
 (Cite as: 2013 WL 431720 (Va.App.))

based on an implication.”

\*7 *Lawrence v. Commonwealth*, 40 Va.App. 95, 102, 578 S.E.2d 54, 58 (2003) (quoting *Jean-Laurent v. Commonwealth*, 34 Va.App. 74, 78–79, 538 S.E.2d 316, 318 (2000)). The burden is “ ‘upon the officer to obtain consent, not on [Henderson] to affirmatively deny consent.’ ” *Id.* at 103, 578 S.E.2d at 58 (quoting *Jean-Laurent*, 34 Va.App. at 80, 538 S.E.2d at 319). The law requires an unequivocal and specific consent to search; an ambiguous response to a request to search is not sufficient. *See Jean-Laurent*, 34 Va.App. at 80, 538 S.E.2d at 319. Further, an officer's warrantless search prior to requesting consent implies that the person asked has no choice in whether or not the officer searches. *See Walls v. Commonwealth*, 2 Va.App. 639, 646, 347 S.E.2d 175, 179 (1986).

Deputy Motley did not obtain consent from Henderson to search his property. First, Deputy Motley searched the **curtilage** and took a set of pictures before ever speaking to Henderson. When Deputy Motley finally spoke to Henderson and asked if she could take some pictures he responded, “I wish you didn't....” Deputy Motley later said,

Uh but anyway if you don't mind I'll just take a few pictures of like I say this is just for our records, it's not as far as I'm concerned Jack Holmes, he's not filed a complaint. These home owners that have had air conditioners stolen filed the complaint so uh if it's not their air conditioners it's not anything.

Henderson said, “Yeah,” but in the context of the compound statement above and in the light most favorable to Henderson as the party that prevailed below, this was not responsive to a question requesting permission. Deputy Motley conceded that Henderson never said, “Yes; go ahead and take pictures.” The Commonwealth argues that Henderson had begun aiding Deputy Motley in her investigation by suggesting that she should get serial numbers. However, whether Deputy Motley proceeded with Henderson's permission is a question of fact

that was resolved by the trial court against the Commonwealth and the record supports the trial court's conclusion. Henderson testified that he meant that Deputy Motley needed to get serial numbers from Jack Holmes; he was not giving her permission to go search his property for serial numbers on heat pumps. The Commonwealth failed to prove with this evidence that Henderson gave unambiguous and unequivocal consent, either express or implied, to search his property.

For the foregoing reasons, we affirm the judgment of the trial court.

*Affirmed.*

Va.App.,2013.  
 Com. v. Henderson  
 Not Reported in S.E.2d, 2013 WL 431720  
 (Va.App.)

END OF DOCUMENT

**EXHIBIT 3**

# The Department of Code Compliance

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*Serving the Citizens of Fairfax County*



## Code Investigation Handbook

the K-Drive under the associated service request file, as described above in sub-section "b." Photographs should be stored in such a manner so as to make very clear the address and date upon which the images were taken. When printing documents for the paper service request file, it is acceptable to print thumbnails of the images or place multiple images per page. However, when preparing a case for litigation, all photographs should be printed in color and be more than one image per sheet. The County Attorney's office requests that the following information be provided either by way of boiler plate or adhesive label: date, time, location, brief description of violation, printed name and signature of the photographer.

Investigators should document every investigation with photographic evidence. This includes unfounded investigations. Even if no violation is observed, a photograph should be taken as proof of compliance at the time of the investigation. For cases where violations were found but were abated at a later date, both before and after photos should be taken to document the compliance process. Such photos could prove useful in the future if a violation is re-established, as the Investigator now has evidence of the re-establishment. When photographs are taken, Investigators should try to take the picture from several different angles to include those from a distance and close-up shots. Additionally, it is often helpful to take a photo from the street to demonstrate a panoramic view of the structure and surrounding property.

#### **e. Corrective Work Order/Notice of Violation to Responsible Party**

Post investigation when violations have been noted, the Investigator shall advise the Responsible Party by issuing a written notice. This means that either a Corrective Work Order (CWO)-(Building Code Violations) or a Notice of Violation (NOV)-(Zoning, Virginia Maintenance, Fire, and Health Violations) will be sent. In all cases, the following information needs to be included in these legal documents: title of the enforcement code that has been violated, date of issuance of the document, property owner(s) name and address, violating address, date and time of the investigation, Investigator's name, signature and contact information, list of specific codes that have been violated, location of these violation on the property, the remedy to comply with all violations, a statement of a timeframe during which compliance must be achieved by the property owner, an appeal clause, and a statement of further penalty if compliance is not achieved within the stated timeframe.

Before attempting to write Zoning or Property Maintenance documents, however, Investigators should first conduct a thorough inquiry of the litigation history for the case. Previous court hearings and outcomes could make the need for a NOV obsolete, and the next step for compliance may be returning to the legal system for further action. Litigation history can be found in FIDO under the Details Tab (Refer to Chapter Five, sub-section "c"), the Street Files on the 2<sup>nd</sup> floor, or can be found within the Zoning Litigation Database (Refer to Chapter Three, sub-section "a").

The Responsible Party should be addressed in each of these documents. The owner of the property can be found on the deed and tax records. At any time, if there are discrepancies between what is listed on the deed and tax records, the Responsible Party should be listed according to whichever document has the most current date of entry. Additionally, the deed will

**VIRGINIA:**

**BEFORE THE STATE BUILDING CODE TECHNICAL REVIEW BOARD**

**IN RE:           Appeal of Jonathan and Carolyn Clark  
                  Appeal No. 14-13**

**PROPERTY MAINTENANCE CODE OFFICIAL'S REPLY MEMORANDUM**

The Respondent, Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia, by counsel, hereby submits the following reply/rebuttal memorandum in response to the Petitioners' Argument submitted on May 6, 2015.

**A.   BACKGROUND**

Petitioners Jonathan and Carolyn Clark own the residential property located at 7227 Auburn Street, Annandale, Virginia ("the subject property"). They ask this Board to overturn the Fairfax County Local Board of Building Code Appeal's ("Local Board") October 21, 2014, decision upholding the Code Official's April 22, 2014, Notice of Violation. The violations cited under the Virginia Maintenance Code for the deterioration of the various exterior elements of the subject property, including the house, garage, and fence are basically uncontested.

Rather than addressing the substance of the civil violations that were presented by the Code Official to the Local Board, the Clark's appeal is based on a dubious legal argument offered to confuse the merits of this simple case. Moreover, the Clark's also seek a "second bite of the apple" by fomenting argument over the Code Compliance Investigators' candid interaction during the informal fact-finding conference. To be certain, this appeal is based on the evidence taken before the Local Board on October 21, 2014. The informal fact-finding conference held on March 26, 2015, was not intended to

give the Clarks an opportunity to augment the record with argument not presented to the Local Board. Instead, the Clark's May 6, 2015, memorandum seeks, for the first time, to attack the sufficiency on the Notice of Violation based solely on the misrepresentation of the informal discussions in March 2015, which sought only to frame the issues for appeal.

**B. POINTS AND AUTHORITIES IN REBUTTAL**

**I. There is No Basis to Support a Claim of Illegal Entry on the Subject Property**

The Clarks memorandum presents a revisionist and inaccurate description of the inspection of the subject property that took place in April 2014. Moreover, the Clarks' claim of snooping, trespassing, or an illegal search is simply untrue, and is clearly at odds with the testimony before the Local Board. The true fact is that Mr. Clark met the Code Compliance Investigators while they were walking up his driveway (Transcript p. 18); the investigators never went to the rear of the house (Transcript p. 21); the various conditions cited are observable from public view (Transcript p. 22) and many of the photographs of the subject property were taken from the street (Transcript p. 17); Mr. Clark volunteered the information concerning the condition of his property (Transcript p. 18); and Mr. Clark never asked the investigators to leave his property (Transcript p. 22).

The attempt to nullify a valid Notice of Violation based on contrived circumstances is simply a transparent misdirection.

**II. The Clarks Cannot Raise New Issues on Not Presented to the Local Board**

Pursuant to Virginia Code Ann. § 2.2-4019 (2014), "[a]gencies shall ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings . . . ." The informal fact-finding process is intended to disseminate the issues

on appeal, and is not an auxiliary hearing, nor an opportunity to introduce additional theories or defenses not presented to the Local Board. The Clark's written argument submitted on May 6, 2015, seeks to attack the Code Official's April 2014, Notice of Violation as insufficient and vague. Specifically, the Clark's devote eight pages (pp. 4-11), alleging that the "*Notice of Violation failed to provide the Clark with sufficient notice of the alleged violations and of the actions to correct them.*" This argument is both disingenuous and untimely.

The assertion that the Notice of Violation is insufficient is belied by the fact that on September 9, 2014, counsel for the Clarks argued the very opposite point before the Local Board. To be sure, counsel stated:

And finally, even if the inspection was valid, and we do not concede that it was, there is a long list of repairs which the Department of Code Compliance suggests that Mr. Clark can do in 30 days. He's not a man of unlimited time or resources, and we submit that the maintenance code require that he be given a reasonable period of time to correct any alleged violations. These would be violations that were asserted, repair the single family dwelling and the garage (inaudible).

Repair all necessary structures, the house, garage, all fences on the property that are in disrepair, repair all holes in the house and the garage on the property. Repair and replace all unrelated rotten exterior wood on the house and the garage, repair or replace the panes on all windows on the garage on the single family dwelling, scrape and paint the entire building and garage. Repair the roof on the garage that is located on the property, but demolish the (inaudible) on the site.

Transcript (pp. 11-12).

The Clark's current assertion that the required remediation is uncertain is contradicted by their counsel's detailed description of the required repairs in front of the

Local Board. It is obvious from both the Notice of Violation as well as the photographs of the subject property what attention and repairs are required for compliance with the Virginia Maintenance Code. Furthermore, much of the Clarks' argument is now based on their perception and/or misrepresentation of the discussions held during the March 26, 2015, informal fact-finding meeting. Any discussions concerning the scope of the required repairs in March 2015, intended to frame the issues before this Board, were neither considered by the Local Board, nor were any such evidence offered by the Clarks in September 2014.

Second, the current arguments offered by the Clarks come too late. Specifically, given the opportunity to address the substance of the Virginia Maintenance Code violations before the Local Board, the Clarks opted only to seek additional time (17 months), with which to make the needed repairs. In response to pointed questions from the Board, counsel responded as follows:

Male Board Member: What is a reasonable period of time?

Mr. Blakely: I would say, looking at Mr. Clark's resources, I would say one year.

Male Board Member: Does he plan to make these corrections?

Mr. Blakely: That's a tough question to ask. I would say as a homeowner he intends to maintain his property in appropriate upkeep, yes, but I can't concede for purposes of preserving our argument that the violations exist because we have to preserve (inaudible), but yes, as a homeowner I think (inaudible), yes, and I would say as - - assemble wood, paint and things that he would.

Transcript (p. 29). Here, the Clarks concede the validity of the Virginia Maintenance Code violations on the subject property, and requested additional time with which to make the required repairs. Accordingly, there is no basis for appeal in this case because any argument to an appellate forum is waived by his affirmative concession before the

Local Board. *Smitty's, Inc. v. Commonwealth Dep't of Alcoholic Bev. Control*, No. 0684-10-3, 2010 WL 4449730 (Va. App.). Accordingly, there is no real dispute or confusion as to what action is required to remediate the Virginia Maintenance Code violations on the subject property.

C. CONCLUSION

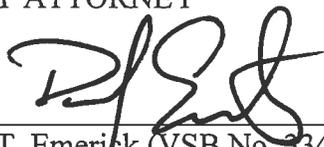
Based on the foregoing grounds, and the record from the Local Board and now before the TRB, the Code Official respectfully requests that this honorable Board affirm the Local Board's decision dated October 21, 2014, based on the Board's collective experience, the specialized competence of the agency, and the purposes of the basic law under which the TRB conducts its business.

Respectfully submitted,

ELIZABETH PERRY, PROPERTY  
MAINTENANCE CODE OFFICIAL FOR  
FAIRFAX COUNTY, VIRGINIA

By  \_\_\_\_\_  
Counsel

DAVID P. BOBZIEN  
COUNTY ATTORNEY

By  \_\_\_\_\_  
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(703) 324-2421; fax (703) 324-2665  
Counsel for Respondent Elizabeth Perry, Property  
Maintenance Code Official for Fairfax County, Virginia

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of May 2015, a true copy of the foregoing Respondent's Reply Memorandum in Opposition to the Appeal and in Support of the Decision of the Fairfax County Board of Building Code Appeals was mailed first-class postage prepaid to:

Craig J. Blakeley, Esquire  
Alliance Law Group, LLC  
7700 Leesburg Pike, Suite 229  
Tysons Corner, VA 22043



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~~RECORDED HEARING~~

FAIRFAX COUNTY CODE OF COMPLIANCE

SEPTEMBER 9, 2014

Job No.: 80458

Pages: 1-39

Transcribed by: Bonnie Panek

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CONDUCTED ON TUESDAY, SEPTEMBER 9, 2014

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C O N T E N T S

REMARKS BY:	PAGE
Mr. Blakely	3
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E X H I B I T S

(None.)

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1 P R O C E E D I N G S

2 THE CHAIRMAN: The microphones here are for  
3 recordation only, not for answer (inaudible), so please  
4 do so so everyone can hear you, and any time you are  
5 requested to please state your name so we'll know who  
6 is speaking in case this is played back for someone.  
7 Both the appellant and the county can appeal our  
8 decision. The appeal (inaudible) 21 days of receipt of  
9 the board's resolution.

10 (Inaudible) for upholding the county's  
11 position at 7227 Arban Street (phonetic). That's the  
12 Clark residence. I -- Mr. Clark is a neighbor and a  
13 friend of mine up the street, so I'm going to recuse  
14 myself from this hearing. I will not vote or make a  
15 motion. I'll just chair the proceedings.

16 Is that okay with the county reps?

17 MR. AMERICK: No objection.

18 THE CHAIRMAN: Okay. Okay. So if a  
19 representative for Mr. Clark or Mr. Clark himself would  
20 please come to the podium and state your case.

21 MR. BLAKELY: Good morning. My name is  
22 Craig Blakely (inaudible). I'm representing

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1 (inaudible) with respect to the code violation  
2 (inaudible) position (inaudible) property by the  
3 Department of Code Compliance. (Inaudible). Secondly,  
4 we contend that the notice of violation was defective  
5 because it violated section 104.5.4.2 of the  
6 maintenance code which is part of the (inaudible)  
7 violation act specifically indicating (inaudible) by  
8 referencing (inaudible) sections of the code  
9 (inaudible) it's a violation or not.

10 And third, (inaudible) violation of section  
11 5.4.2 (inaudible) violation. That of course assumes  
12 that the inspection was valid which we do not concede.  
13 The Fourth Amendment of the U.S. Constitution requires  
14 one or two things for inspection. It requires either  
15 (inaudible). It's not quite the same thing as the same  
16 level of showing that is required in the case of  
17 criminal conduct, but nevertheless there is a required  
18 showing (inaudible) on the property by the government.

19 The Department of Code Compliance simply  
20 responds to our appeal on that point by contending that  
21 the search was legal. They don't explain why. They  
22 don't go into any analysis. They simply say

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1 (inaudible). Now, there's no question that the  
2 Department of Code Compliance concedes that the Fourth  
3 Amendment applies.

4 In a letter written by Tammy (inaudible) who  
5 is a management (inaudible) written to me dated May  
6 19th of this year in response to a request under the  
7 Virginia Freedom of Information Act they provided to us  
8 the manual for the Department of Code of Compliance  
9 (inaudible), so we have complete copy of the manual  
10 except for the redaction of a few pages which they  
11 contend are protected under the attorney/client  
12 privilege, and therefore they argue it was (inaudible)  
13 provided to us under the Virginia Freedom of  
14 Information Act.

15 What the letter says, and I have a copy of  
16 it for the board to see, but what she says specifically  
17 is Sections 4B, C and D at pages 16 and 17 at paragraph  
18 13Biii (inaudible) in the handbook, inspection policy  
19 is exempt from the (inaudible) within the code section  
20 which deals with attorney/client privilege. As such  
21 materials and legal advice given by the county  
22 attorneys (inaudible) investigators about the legal

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1 issues relating to, among other things, Fourth  
2 Amendment law.

3 So while we don't have the specific language  
4 in the handbook when it comes to the county attorney's  
5 advice to the code inspector as to how we comply with  
6 the Fourth Amendment, it seems to me that letter is a  
7 concession (inaudible). Now, the Department of Code

8 Compliance handbook immediately after the redacted  
9 section, and again I have copies of this report if  
10 you'd like to see it, but it has a provision which says  
11 conducting an investigation.

12 And what it says after being granted  
13 permission for an investigation, investigator should  
14 request to be accompanied for the full investigation by  
15 the person who granted this permission. There was no  
16 consent given in this case. There was no consent  
17 requested, and certainly by the time as to what  
18 happened -- I'll review the facts in a minute, but by  
19 the time Mr. Clark realized people were on his property  
20 they had already entered the property and done or  
21 perhaps completed most of their inspection.

22 So the department's manual, that section

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1 that we concede, does recognize that one way for the  
2 inspectors to be on the property was granted permission  
3 by the property owner. We also obtained from  
4 (inaudible) a document called the DCC safety policy.  
5 It's a memorandum of October 1, 2013. Again, I have a  
6 copy for the board if you'd like to see it, in which it  
7 says at the end execution of inspection warrants shall  
8 include public safety personnel, (inaudible) invites a  
9 police officer to make sure there's no problem on the  
10 property.

11 So you have the Fourth Amendment which the  
12 department concedes it applies, and although we don't  
13 have the specific advice, the specific section of the  
14 inspector's manual that deals with the Fourth  
15 Amendment, we have a provision which says you have to  
16 get permission, you have to be accompanied by the  
17 property owner, but presumably in the alternative for  
18 this safety policy you have to have an inspection.

19 Now, in this case what happened is the  
20 inspectors showed up on the Clark property, no knock on  
21 the door, no attempt to get permission, certainly no  
22 permission requested or granted. Mr. Clark looks out a

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1 window, sees these people on his property, asks them  
2 what they're doing there. They say that they're there  
3 for a complaint dealing with multiple occupancy  
4 violation, multiple occupancy violations.

5 I should note that neither in this case  
6 where there were violations, notice of violation issued  
7 with respect to alleged violation of a building code or  
8 in a parallel proceeding before the Board of Zoning  
9 Appeals to be heard next week where there were no  
10 dispositions with respect to zoning violations, in none  
11 of those cases was a notice issued with respect to  
12 multiple occupancy violations.

13 In fact, if you look again at the inspection  
14 manual given to the Department of Code Compliance  
15 inspectors what it says is depending on the type of  
16 alleged violation being investigated all evidence  
17 supporting the presence of this violation should also  
18 be noted. It says, for example, if a multiple  
19 occupancy violation is suspected, as the inspector said  
20 to Mr. Clark in this case it was, what it says is that  
21 all occupant names and telephone numbers should be  
22 listed.

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1 Other examples that should be put in the  
2 report but is not limited to name, age and relationship  
3 of the occupants, location of the bedrooms in the  
4 house, where each occupant sleeps, whether key, locks  
5 or personal effects are present for each bedroom,  
6 whether each occupant of the house has unfettered  
7 access throughout the house, the amount of rent paid by  
8 them, whether a second kitchen exists, et cetera, et  
9 cetera.

10 None of those things were investigated by  
11 the inspectors. They didn't even go into the house, so  
12 it appears that there were a number of violations not  
13 by my client but, in fact, by the inspectors. They  
14 violated the Fourth Amendment. They didn't seek or get  
15 consent. They didn't do an inspection warrant and they  
16 didn't follow their own procedures if indeed they were  
17 there to investigate a multiple occupancy violation.

18 They didn't do anything that was required by  
19 their own manual in the event that they suspected that  
20 there was a multiple occupancy violation. It suggests  
21 that perhaps there was something else going on here,  
22 that they weren't really interested in a multiple

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1 occupancy violation even though that was their  
2 purported justification for coming onto the property.

3 So our first point is that they did not  
4 comply with the Fourth Amendment, and indeed they did  
5 not follow their own procedures to the extent we can  
6 discern what they are. The redacted pages might shed  
7 more light on that. Unfortunately we don't have access

8 to them, but it does appear that they would agree with  
9 us that they have to have either consent or an  
10 inspection (inaudible). They didn't have either, and  
11 with respect to the multiple occupancy violation no  
12 violation was ever issued. No real investigation was  
13 ever conducted of the multiple occupancy violation  
14 which they asserted was the reason they were there on  
15 Mr. Clark's property.

16 Now, with respect to the other two  
17 complaints the maintenance code clearly specifies  
18 section N104.5.4.2 states specifically that the notice  
19 of violation shall, shall, meaning it's a requirement,  
20 shall indicate (inaudible) by referencing the appeal  
21 section of this code. The notice of violation contains  
22 no such citation. It says you have so many days to

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1 appeal, it says this is what you do, but it doesn't  
2 cite the code provision, so we argue that it's  
3 defective because of that.

4 And finally, even if the inspection was  
5 valid, and we do not concede that it was, there is a  
6 long list of repairs which the Department of Code  
7 Compliance suggests that Mr. Clark can do in 30 days.

8 He's not a man of unlimited time or resources, and we  
9 submit that the maintenance code require that he be  
10 given a reasonable period of time to correct any  
11 alleged violations. These would be violations that  
12 were asserted, repair the single family dwelling and  
13 the garage (inaudible).

14 Repair all necessary structures, the house,  
15 garage, all fences on the property that are in  
16 disrepair, repair all holes in the house and the garage  
17 on the property. Repair and replace all unrelated  
18 rotten exterior wood on the house and the garage,  
19 repair or replace the panes on all windows on the  
20 garage on the single family dwelling, scrape and paint  
21 the entire building and garage. Repair the roof on the  
22 garage that is located on the property, but demolish

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1 the garage (inaudible) on the site.

2 All of that the department says he has to do  
3 in 30 days. By whatever reasonable means we don't  
4 think it means that, doing all of that in 30 days, so  
5 that's in essence our position. Thank you very much.

6 THE CHAIRMAN: Any questions? Okay. A  
7 county representative, please, in this case.

8 ~~MR. AMERICK: Good morning, Mr. Chairman,~~  
9 members of the board. My name is Paul Americk  
10 (phonetic) (inaudible). With me this morning is Danny  
11 (inaudible), Department of Code Compliance  
12 investigator. First off let me say that the issues of  
13 constitutionality -- can you hear me?

14 THE CHAIRMAN: Almost.

15 MR. AMERICK: I'll speak up.

16 THE CHAIRMAN: Thank you.

17 MR. AMERICK: I don't want to yell.

18 MALE BOARD MEMBER: Thank you.

19 MR. AMERICK: The issue of constitutionality  
20 of a search on private property is academically  
21 interesting, but this is not the forum for that. I  
22 could take 20 minutes and argue the law but I think

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1 it's unfair to do so, so I will handle this not in a  
2 court of law, and I assume that you gentlemen are not  
3 lawyers so this is not the right forum to argument  
4 whether or not the entry upon the property was legal or  
5 appropriate.

6 But I will say that Mr. Clark and his  
7 counsel inferring that the Fourth Amendment requiring  
8 ~~that an administrative warrant is required to be posted~~  
9 on the property, however, no such warrant is uniformly  
10 required, and under the facts of this case the  
11 investigators did not violate Mr. Clark's  
12 constitutional rights.

13 Public officials observation of conditions  
14 that is in plain view, underline plain view, does not  
15 constitute a search as the official has a lawful right  
16 to be at the location for which the condition is  
17 plainly viewed. In this instance the code compliance  
18 investigators encountered Mr. Clark in the driveway of  
19 such property before they reached Mr. Clark's front  
20 door. At no time during the ensuing conversation did  
21 Mr. Clark object to their presence.

22 Moreover, much of the information that was

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1 gleaned was volunteered by Mr. Clark. Finally, the  
2 elements of property over which Mr. Clark now assert a  
3 privacy interest are readily observable from beyond the  
4 limits of the property. That is the street. The roof,  
5 the windows and the other accessory structures such as  
6 the fence are in plain view.

7 THE CHAIRMAN: Did he give you a copy?

8 MALE BOARD MEMBER: Yes.

9 THE CHAIRMAN: Each of you.

10 MALE BOARD MEMBER: Thank you.

11 MR. AMERICK: The best way is to use Google  
12 maps. That's what that photo is.

13 THE CHAIRMAN: Yeah, some of us don't like  
14 it.

15 MR. AMERICK: Well, I typed in the address  
16 and I clicked the little yellow man on the street in  
17 front of 7227 Arban Street, and that's the picture that  
18 it showed.

19 MALE BOARD MEMBER: Are you going to start  
20 issuing citations based on Google maps, sir?

21 MR. AMERICK: Well, Mr. Arnold, what I'm  
22 demonstrating from Google maps is that the condition of

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1 the property, that such violation is viewable from the  
2 street that Google maps provides, from the street, not  
3 from Mr. Clark. If you look at that picture you can  
4 see the conditions as sighted are viewable from the  
5 street and in plain view.

6 Now, Mr. Clark and his counsel also argue  
7 that officials are required to obtain a warrant to  
8 ~~enter in the property. That position is impractical~~  
9 since many investigations as you know (inaudible)  
10 process, and potentially here as well once an owner  
11 claims care of the said violation (inaudible) premises.

12 Further, it's inconsistent with the  
13 statutory (inaudible) under (inaudible) code 36105Ciii  
14 that's (inaudible), and that language provides  
15 (inaudible) his own or his agent shall make a  
16 reasonable effort to obtain consent from the owner,  
17 occupant or tenants of the property or structure prior  
18 to seeking issuance of an inspection warrant under this  
19 section.

20 To summarize the violations that are  
21 observable from the street under the law (inaudible).  
22 There is no reasonable expectation of privacy in this

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1 instance. Even if they (inaudible) inspectors are  
2 authorized to enter the property. There are no no  
3 trespassing signs, no signs that say private property.  
4 There's no signs that say DCC investigators keep out.  
5 Of course he will tell that (inaudible) Sanchez entered  
6 the property, walked down the driveway into a mess in  
7 the driveway before they (inaudible).

8 Now, Mr. (inaudible) makes an argument that  
9 the notice of violation violates due process. The  
10 Supreme Court of the United States (inaudible) notice  
11 requirement to satisfy due process is to apprise  
12 interested parties of the penancy of the action and  
13 afford them an opportunity to present their objections.  
14 Notice (inaudible) such as (inaudible). The  
15 constitutional violation is not complete (inaudible) is  
16 not complete unless and until the state fails to  
17 provide due process.

18 Due process is here this morning. It's here  
19 as an opportunity to argue the case. Therefore,  
20 there's no violation of due process. Finally, with the  
21 argument that 30 days isn't enough time, well, how much  
22 time is enough? This code is in violation. It's five

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1 months old. Mr. Clark was here in late July. He made  
2 no effort to correct any of these violations. This is  
3 the first time they've been here (inaudible) inspected  
4 the property from the street yesterday in violation  
5 only (inaudible).

6 THE CHAIRMAN: (Inaudible).

7 (There was a brief pause in the

8 proceedings.)

9 THE CHAIRMAN: (Inaudible) you're going to  
10 proceed.

11 MR. PORCHAK: Good morning. My name is  
12 Charles Porchak (phonetic) (inaudible). I'm a  
13 (inaudible) with the Department of Code Compliance.  
14 (Inaudible).

15 MALE BOARD MEMBER: Speak up a little bit,  
16 please, sir.

17 MR. PORCHAK: Those are pictures as of  
18 yesterday. One thing that the Department of Code  
19 Compliance (inaudible) here, (inaudible) property  
20 (inaudible). And I inspected the property on April  
21 9th, myself and Investigator Sanchez who is here, and  
22 we took pictures from the street, and while walking

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1 down the driveway to the sidewalk from the driveway,  
2 while walking down the driveway Mr. Clark met us in the  
3 driveway, and we went over the violations of the  
4 maintenance code (inaudible).

5 Mr. Clark gave information, too. I asked  
6 questions, he answered questions (inaudible). The  
7 (inaudible) that we observed were the house was in  
8 disrepair, it needed to be scraped and painted. The  
9 hole in the roof, I asked Mr. Clark what -- why was  
10 there a tarp on the roof of the garage, and he stated  
11 that a tree fell through the garage about a year or so  
12 ago, (inaudible) and he hadn't got a chance to repair  
13 it.

14 And as for the holes in the house I asked  
15 Mr. Clark (inaudible). I asked him (inaudible) on the  
16 property (inaudible). Those violations were issued to  
17 Mr. Clark from the sheriff's office on April 11th and  
18 it was delivered by certified mail on April 23rd  
19 (inaudible), and the notices being (inaudible).

20 (Inaudible) the structure is in need of  
21 repair, (inaudible) repair (inaudible), repair of  
22 (inaudible). It is my position and DCC's position that

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1 the violation is still ongoing. When we start out we  
2 give 30 days. If the violator is working towards  
3 compliance (inaudible). All we have to do is see there  
4 is some progress (inaudible). If Mr. Clark were to  
5 start the repairs (inaudible) time frame (inaudible),  
6 30 days and 5 months.

7 MALE BOARD MEMBER: I have a question. In  
8 his introduction to this Mr. Clark's representatives  
9 said that the complaint was originally from occupancy,  
10 multiple occupancy?

11 MR. PORCHAK: Yes, sir.

12 MALE BOARD MEMBER: And all of these  
13 citations are related to exterior maintenance. There's  
14 nothing here about multiple occupancy.

15 MR. PORCHAK: Two complaints came on the  
16 property, one for zoning violations and one for  
17 maintenance code violation. The first question I asked  
18 was --

19 MALE BOARD MEMBER: Okay.

20 MR. PORCHAK: When I met Mr. Clark in the  
21 driveway I first introduced myself and Mr. Sanchez. I  
22 explained to him why I was here and the first complaint

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1 was for multiple occupancy and Mr. Clark (inaudible),  
2 and I was satisfied with that.

3 MALE BOARD MEMBER: I see. So there was a  
4 separate complaint under the building code?

5 MR. PORCHAK: There was a violation of the  
6 (inaudible).

7 MALE BOARD MEMBER: And what is your usual

8 -- I remember in another case with -- it might have  
9 been (inaudible), said we have the right of a mailman  
10 to a property. Can you tell me what your usual  
11 practice is in that regard? There's often cases where  
12 there's a complaint and you don't have permission to  
13 enter the house. What is your typical procedure and  
14 limitation?

15 MR. PORCHAK: When we arrive on the property  
16 the first thing we do is we go to the front door and we  
17 knock on the door. Like I said, there's a sidewalk  
18 leading from the road to Mr. Clark's front door, a  
19 sidewalk down the driveway.

20 MALE BOARD MEMBER: Okay.

21 MR. PORCHAK: (Inaudible) sidewalk on the  
22 side or a lot of people enter the house on the side

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1. (inaudible) garage (inaudible) property. (Inaudible)  
2 came out (inaudible) --

3 MALE BOARD MEMBER: Okay.

4 MR. PORCHAK: -- inspection (inaudible).

5 FEMALE BOARD MEMBER: Where is the deck?

6 MR. PORCHAK: Where is the deck?

7 FEMALE BOARD MEMBER: Uh-huh.

8 MR. PORCHAK: The deck is in the rear of the  
9 house.

10 FEMALE BOARD MEMBER: So how did you get  
11 access to the rear of the house?

12 MR. PORCHAK: I've never been to the rear of  
13 the house.

14 FEMALE BOARD MEMBER: Why is it mentioned in  
15 your violation?

16 MR. PORCHAK: Where is it mentioned in the  
17 violation?

18 FEMALE BOARD MEMBER: One second.  
19 Balconies, decks and fences shall be maintained in good  
20 condition. Are you just stating the code or are you  
21 just -- this is your --

22 MR. PORCHAK: That (inaudible).

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1 FEMALE BOARD MEMBER: At any point did you  
2 go to the rear of the house?

3 MR. PORCHAK: No, we did not.

4 FEMALE BOARD MEMBER: Where did you see the  
5 -- where is the fence that is in disrepair?

6 MR. PORCHAK: It's to the right of the  
7 garage.

8 FEMALE BOARD MEMBER: Is it observable from  
9 public view?

10 MR. PORCHAK: Yes, it is, and from the  
11 driveway when I was interviewing Mr. Clark and asking  
12 him questions about the violation.

13 FEMALE BOARD MEMBER: When Mr. Clark asked  
14 you to leave the property, if he did, did you leave the  
15 property or you --

16 MR. PORCHAK: Mr. Clark never asked me to  
17 leave the property. If he would have asked me to leave  
18 the property I would have left the property immediately  
19 which we're required to do.

20 FEMALE BOARD MEMBER: All right. Thank you.

21 MR. PORCHAK: You're welcome.

22 THE CHAIRMAN: Any questions? Okay. Thank

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1 you, Mr. Porchak.

2 MR. PORCHAK: Thank you.

3 THE CHAIRMAN: Mr. Blakely (phonetic), would  
4 you like to respond?

5 MR. BLAKELY: Yes, sir. I think it's -- I  
6 think Mr. Americk's position is very interesting. On  
7 one hand he suggests this is not the appropriate forum  
8 to consider constitutional issues (inaudible) due  
9 process argument and cites the U.S. Supreme Court, so  
10 I'm not sure exactly what his position is, but I think  
11 you can resolve this question without going to the U.S.  
12 Constitution.

13 The state statutory code section Mr. Americk  
14 cites, it says, and I'm paraphrasing now -- first of  
15 all, he never presented this in terms of any previous  
16 paper that's been filed or served on the board or on  
17 us, so we're hearing it for the first time today. As I  
18 said, the only thing the Department of Code Compliance  
19 said in defense of their inspection (inaudible), so  
20 this is the first time we've heard about this  
21 particular section and the reliance on it, but as I  
22 understand it it says you have to make reasonable

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1 efforts to get permission, and if that doesn't work you  
2 have to get an inspection going.

3 It seems pretty clear. I mean, you don't  
4 have to go Fourth Amendment law. That's exactly what  
5 we've been saying, reasonable efforts to get permission  
6 which they didn't do, and then if that doesn't work you  
7 have to get an inspection form. Now, the question,  
8 ~~ma'am, you asked about did they ask to leave, with all~~  
9 due respect I don't think that's relevant because the  
10 government comes onto your property. They have to get  
11 a permit of permission.

12 The government starts searching my house,  
13 they come in with apparent authority. It's not my job  
14 to tell them to get out. It's their responsibility to  
15 prove in the first instance to get the necessary  
16 authority to come in. Any other rule would put a  
17 tremendous burden on the individual property owner, et  
18 cetera, who automatically responds whether it's a  
19 policeman, whether it's a code enforcement official,  
20 they automatically assume that they have the authority  
21 to be there if they're a government official.

22 So I don't think admittedly if Mr. Clark had

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1 asked them to leave they would have left, but I think  
2 the important thing is did they have the authority to  
3 come on in the first place. Now, the picture that Mr.  
4 Americk presented from Google Earth, like some of you I  
5 have questions about whether they should be produced.  
6 I don't like the idea that Google Earth knows this much  
7 about Mr. Clark or anybody else, but in looking at this  
8 picture what do we see? We see a couple of cars and a  
9 garage. That's all we see.

10 Now, their point that these things are in  
11 plain view from the street, maybe they were, maybe they  
12 weren't, but none of the evidence with maybe one  
13 exception, none of the evidence on which the notice of  
14 violations were based came from the street. They came  
15 onto the property. They took pictures of the side of  
16 the house from the property. They were there on the  
17 property, so the question of whether they could have  
18 seen them from the street it seems to me is irrelevant.  
19 The fact that they didn't, the evidence that they  
20 submitted came from being on the property.

21 In terms of whether or not Mr. Clark has  
22 (inaudible), I would point out to the board that there

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1 were two sets of violations issued by the code  
2 enforcement official. One has to do with your  
3 jurisdiction, the building. The other has to do with  
4 zoning violations alleged in Fairfax County. There was  
5 a claim that he had some cars that were inoperable.  
6 Mr. Clark would say the only difference is a blue car  
7 versus a gray car. It makes me wonder frankly about  
8 ~~how much can safely be observed from the street by the~~  
9 code enforcement officials.

10 In fact, there were three cars that were  
11 removed. The code enforcement people apparently didn't  
12 notice that. It makes me wonder about how much, in  
13 fact, could be seen from the street because those three  
14 cars -- if you want direct testimony from Mr. Clark he  
15 will give it, but three cars were removed to try and  
16 start worrying about the issues that were cited with  
17 respect to the Board of Zoning, the Fairfax County  
18 code, so as we said even assuming that this was a valid  
19 search, we don't concede, these things have to be  
20 sequenced.

21 So, in fact, we had taken certain steps,  
22 perhaps not directly related to building code

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1 violations but to remove those cars from the lot and,  
2 you know, I would recall -- Mr. Clark again will  
3 testify to this. (Inaudible) previous conversation  
4 with one of the code enforcement inspectors here Mr.  
5 Clark (inaudible) a neighbor's property and some issues  
6 with respect to that and Mr. Porchak said we can't do  
7 that, we can't go onto the property without permission.  
8 ~~They had no problem doing it to Mr. Clark.~~

9 Now, with respect to the time sequence about  
10 whether they got a lot of (inaudible) with Mr. Clark,  
11 the evidence that is submitted, there's nothing in the  
12 record that really says that. They based their notice  
13 of violation on the pictures that they took from the  
14 property and they were clearly not taken with one or  
15 two exceptions from the street, so I submit that under  
16 -- you don't have to worry about federal constitution.

17 I think you can look at state law, Virginia  
18 code, and certainly as a Virginia administrative body  
19 enforcing Fairfax County ordinances and the Virginia  
20 state code you can look within the Virginia state code,  
21 and that provision as Mr. Americk cited to you, it says  
22 make reasonable efforts to get permission. If you

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1 can't get permission get an inspection going. They  
2 didn't do that.

3 They just showed up, and Mr. Clark did not  
4 ask them to leave but they were acting under apparent  
5 authority and you do not want to put the burden on an  
6 individual citizen to throw somebody out acting under  
7 apparent authority. That's a very dangerous thing. Do  
8 you want somebody challenging a police officer who  
9 comes onto your property?

10 Even if they're acting illegally do you  
11 really want that kind of confrontation or do you want  
12 it with a code enforcement official? I don't think you  
13 do. Their assumption is they're there legally.  
14 They're entitled to assume they're there legally. For  
15 that reason I ask you to dismiss the notice of  
16 violation.

17 In the alternative if you choose not to I  
18 submit Mr. Clark should be given a reasonable amount of  
19 time as a man of limited means and resources to correct  
20 these problems, and again -- and he may choose to do so  
21 just as a property owner, but I believe that for the  
22 reasons I've stated the notice of violation should be

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1 removed, should be dismissed.

2 You don't have to look at the U.S.  
3 Constitution. You can look at Virginia code. You can  
4 even look at their own procedures. If you were able to  
5 get to the redacted manual I'm pretty confident that it  
6 would say that they exceeded their authority in this  
7 case. Thank you.

8 MALE BOARD MEMBER: I have a couple of  
9 questions. What is a reasonable period of time?

10 MR. BLAKELY: I would say, looking at Mr.  
11 Clark's resources, I would say one year.

12 MALE BOARD MEMBER: Does he plan to make  
13 these corrections?

14 MR. BLAKELY: That's a tough question to  
15 ask. I would say as a homeowner he intends to maintain  
16 his property and to engage in appropriate upkeep, yes,  
17 but I can't concede for purposes of preserving our  
18 argument that the violations exist because we have to  
19 preserve (inaudible), but yes, as a homeowner I think  
20 (inaudible), yes, and I would say as -- assemble wood,  
21 paint and things like that he would.

22 MALE BOARD MEMBER: I have a couple of

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1 questions. Your second objection says that it doesn't  
2 indicate the right of appeal by referencing the appeal  
3 section.

4 MR. BLAKELY: Right.

5 MALE BOARD MEMBER: Now, I'm looking at a  
6 document here that is the date of April 11th and then  
7 another one on April 22nd.

8 MR. BLAKELY: Right.

9 MALE BOARD MEMBER: And on both cases  
10 there's a big section about the appeal.

11 MR. BLAKELY: Right, but it doesn't  
12 specifically cite the section (inaudible). We  
13 interpret that section of the Virginia maintenance code  
14 as requiring that citation.

15 MALE BOARD MEMBER: So you're saying that  
16 because it doesn't say the number 104.5.4.2?

17 MR. BLAKELY: Or whatever the section is,  
18 yeah, that's correct.

19 MALE BOARD MEMBER: It's invalid?

20 MR. BLAKELY: That's correct.

21 MALE BOARD MEMBER: I'm not an attorney,  
22 sir. I am a citizen, however.

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1 MR. BLAKELY: Yeah.

2 MALE BOARD MEMBER: And I think the United  
3 States Constitution is extremely -- it's our last best  
4 hope.

5 MR. BLAKELY: Yeah.

6 MALE BOARD MEMBER: But this isn't the forum  
7 to debate that.

8 MR. BLAKELY: Okay.

9 MALE BOARD MEMBER: If you have to preserve  
10 your rights under that I would like to say that --  
11 stipulate that this board is not going to address that  
12 matter.

13 MR. BLAKELY: Well, that's a secondary issue  
14 for our Fourth Amendment.

15 MALE BOARD MEMBER: And I also believe  
16 strongly that I would like to hear some testimony as to  
17 whether you believe these conditions cited in this  
18 violation, the actual substance of the matter, is true  
19 or false.

20 MR. BLAKELY: We did not dispute those  
21 issues. However, we are relying on our Fourth  
22 Amendment claim because we do not believe the search

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1 and inspection was valid.

2 MALE BOARD MEMBER: Okay. Very good. I  
3 understand. I understand.

4 MR. BLAKELY: But as I said in response to  
5 the previous question as a reasonable homeowner Mr.  
6 Clark (inaudible) legal action just as a homeowner --

7 MALE BOARD MEMBER: Okay.

8 MR. BLAKELY: -- not necessarily in response  
9 to these issues.

10 MALE BOARD MEMBER: Now, here's another  
11 question for you. The county has seen five months go  
12 by and they -- you've stated there has been some  
13 change, but they haven't detected any change of the  
14 items on this list. Are you consenting to them come to  
15 inspect to see if this is still valid?

16 MR. BLAKELY: No.

17 MALE BOARD MEMBER: So you want another  
18 year, you want a total of 17 months to address these  
19 issues, a factor of 17 times what the county said was  
20 -- what you said was unreasonable.

21 MR. BLAKELY: Well, I guess one could look  
22 at it that way (inaudible) from today.

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1 MALE BOARD MEMBER: From today.

2 MR. BLAKELY: Yes.

3 MALE BOARD MEMBER: Am I allowed to ask him  
4 if they intend to appeal our decision?

5 MR. BLAKELY: The answer is if it's adverse  
6 to us we do.

7 MALE BOARD MEMBER: So you're going to get  
8 all the time you need. I think you should get busy  
9 fixing the house. I'm just going to say that.

10 MR. BLAKELY: Okay.

11 MALE BOARD MEMBER: Okay.

12 MR. BLAKELY: But that judgment on that  
13 issue with all due respect does not influence your  
14 determination of whether it's a valid inspection or  
15 not.

16 MALE BOARD MEMBER: I understand. I  
17 understand that, sir.

18 THE CHAIRMAN: Any other questions? Okay.  
19 Thank you, Mr. Blakely. Mr. Americk, Mr. Porchak, do  
20 you have anything that you'd like to add, or Ms.  
21 Barrett?

22 MS. BARRETT: Good morning, (inaudible). I

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1 wanted to (inaudible) wanted to respond to that issue,  
2 that (inaudible) this is not (inaudible) violation  
3 (inaudible). With regards to the inspection that was  
4 conducted (inaudible), so (inaudible).

5 MALE BOARD MEMBER: (Inaudible) a realistic  
6 period of time for them to make those repairs. It  
7 seems expensive (inaudible).

8 MS. BARRETT: (Inaudible) time line.

9 MALE BOARD MEMBER: We're going to run into  
10 winter the way that things are going. He's avoided  
11 the entire spring and summer.

12 MS. BARRETT: (Inaudible).

13 FEMALE BOARD MEMBER: But 30 days for some  
14 of the violations is not reasonable just to get the  
15 permits it require, just to obtain contractors, get  
16 estimates. All of that is going to take more than 30  
17 days. Maybe you need to tell them that not 30 days to  
18 finish everything, 30 days they have to show you that  
19 they are doing some work or they're trying to obtain  
20 and get the violations addressed.

21 MALE BOARD MEMBER: Or provide (inaudible).

22 MS. BARRETT: (Inaudible) dialogue with us

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1 that is (inaudible) we are in. (Inaudible), but that  
2 dialogue (inaudible) opportunity to have that  
3 discussion, and for those (inaudible).

4 THE CHAIRMAN: Any other questions?

5 MALE BOARD MEMBER: I have a question. Is a  
6 permit required for this work?

7 MS. BARRETT: Not (inaudible), no. It would  
8 depend also on (inaudible), so it would depend on what  
9 (inaudible). So it would depend on which (inaudible)  
10 engage in a dialogue.

11 MALE BOARD MEMBER: So if he's not going to  
12 demolish the garage he does not need a permit?

13 MS. BARRETT: I mean, we could go through.  
14 There are several violations here (inaudible).

15 MALE BOARD MEMBER: Well, the scope of work  
16 has been spelled out.

17 MS. BARRETT: Well, (inaudible). For  
18 (inaudible) does not require a permit (inaudible).

19 FEMALE BOARD MEMBER: The roof repair  
20 requires it.

21 MS. BARRETT: What?

22 FEMALE BOARD MEMBER: The roof repair

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1 requires a permit.

2 MALE BOARD MEMBER: No.

3 FEMALE BOARD MEMBER: Yeah, if the tree is  
4 falling on it.

5 MALE BOARD MEMBER: No, it doesn't.

6 FEMALE BOARD MEMBER: He said that would be  
7 -- still --

8 MS. BARRETT: Not all roof repairs require a  
9 permit. (Inaudible) work requires (inaudible) require  
10 a permit (inaudible).

11 FEMALE BOARD MEMBER: Requires a permit  
12 requirement or not, just (inaudible).

13 MS. BARRETT: (Inaudible).

14 THE CHAIRMAN: I think (inaudible).

15 MS. BARRETT: Okay.

16 THE CHAIRMAN: We're just getting into  
17 things that we really don't need to get into right now,  
18 (inaudible) ordinance required unless something is  
19 uncovered by (inaudible), so we'll close our testimony  
20 until (inaudible).

21 MS. BARRETT: Okay. Thank you.

22 THE CHAIRMAN: Thank you.

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1 MALE BOARD MEMBER: I make a motion to deny  
2 the (inaudible).

3 MALE BOARD MEMBER: Really.

4 MALE BOARD MEMBER: (Inaudible).

5 MALE BOARD MEMBER: Well, (inaudible).

6 MALE BOARD MEMBER: I second.

7 THE CHAIRMAN: We have a motion and a  
8 second. Any (inaudible)? All those in favor say aye.

9 VOICES: Aye.

10 THE CHAIRMAN: And all in agreement?

11 MALE BOARD MEMBER: I'm not in favor of  
12 denying an appeal. I'm not saying I'm in favor of  
13 granting an appeal, but I'm not in favor of denying it.

14 THE CHAIRMAN: Okay.

15 MALE BOARD MEMBER: Denied.

16 MALE BOARD MEMBER: (Inaudible).

17 MALE BOARD MEMBER: (Inaudible).

18 THE CHAIRMAN: Okay. All right. It's  
19 denied, Mr. Clark, so you've got 21 days (inaudible).

20 MR. BLAKELY: (Inaudible).

21 THE CHAIRMAN: Yes, (inaudible) 32.

22 MALE BOARD MEMBER: 31.

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1 THE CHAIRMAN: 31, sorry. 31 (inaudible).

2 MR. BLAKELY: Thank you.

3 THE CHAIRMAN: And my -- two extensions.

4 MALE BOARD MEMBER: Thank you, Mr. Chairman.

5 THE CHAIRMAN: Thank you.

6 (The recorded hearing was concluded.)

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CERTIFICATE OF TRANSCRIBER

I, Bonnie K. Panek, do hereby certify that  
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recording as provided; and that I am neither counsel  
for, related to, nor employed by any of the parties to  
this case and have no interest, financial or otherwise,  
in its outcome.



BONNIE K. PANEK

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Mark L. Riley  
Appeal No. 14-14

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VIRGINIA:

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

IN RE: Appeal of Mark L. Riley  
Appeal No. 14-14

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1. Mark L. Riley (Riley), the owner of a house at 5400 Nine Mile Road in Henrico County, appeals action taken by the County of Henrico building inspections department. This Review Board staff summary is the result of a review of the documents submitted by Riley and the County and the result of an informal fact-finding conference conducted by Review Board staff on February 10, 2015, attended by Riley and County staff.

2. On September 22, 2014, in response to a complaint from a tenant, the County inspections department attempted to conduct an inspection of the house. Riley resides in Lynchburg, Virginia, and the house is rented out, allegedly to up to nine unrelated persons. Riley was using Ms. Lori Tillis (Tillis), a resident of the house at the time, as the person responsible for managing the tenants.

3. When the County inspectors arrived, Tillis told the inspectors that they could not enter the house without Riley's permission. Tillis then placed a telephone call to Riley. Riley spoke with one of the inspectors and a date of October 22, 2014 was established for Riley to meet with the inspectors at the property. Riley was in the process of evicting a number of the tenants and that date included time for Riley to repair problems caused by the tenants.

4. The County inspectors returned on September 26, 2014 and were let into the house by tenants that Riley states were already evicted but that the County sheriff had not yet served papers on. The County inspectors contacted the County's legal counsel prior to conducting the inspection. The inspection resulted in the issuance of a notice dated September 26, 2014 declaring the house unfit for human occupancy.

5. The County inspectors conducted a second inspection on October 3, 2014 in response to a request from Riley to have more time to make repairs. That inspection resulted in the issuance of a notice dated October 8, 2014 which stated that it was replacing the notice dated September 26, 2014.

6. Riley filed an appeal to the County's Local Board of Building Code Appeals on October 12, 2014 and the local board conducted a hearing on November 10, 2014. Riley was present at the hearing.

7. While the local board did not record the hearing and there is no record of the testimony, a review of Riley's application for appeal to the local board and discussions at the informal fact-finding conference conducted by Review Board staff indicate that the only issue raised by Riley to the local board was whether to overturn the County's notice because the County inspectors did not have permission to enter the property to perform an inspection. The County appeals board's resolution states that the board found no basis to rule on Riley's appeal. Presumably, and according to County staff, this ruling is indicating that the local board felt that it had no authority to rule on whether to overturn the notice for reasons relating to right of entry since that type of issue is legal in nature.

8. Riley further appealed to the Review Board and Riley's statement of specific relief sought filed with the application only provided a narrative of what had occurred at the

property and not the scope of his appeal. However, at the informal fact-finding conference conducted by Review Board staff, Riley stated that he was appealing the issuance of the October 8, 2014 notice both concerning its merits and concerning the right of entry issue.

9. This staff document was sent to Riley and the County building department and opportunity given for the submittal of objections or corrections to it and for the submittal of additional information or written arguments. A hearing is then to be scheduled before the Review Board.

Suggested Issues for Resolution by the Review Board

1. Whether to remand the appeal to the County Local Board of Building Code Appeals to overturn, uphold or modify the October 8, 2014 notice issued by the County building department; or, if not remanding the appeal,

2. Whether to overturn, uphold or modify the October 8, 2014 notice issued by the County building department.

# COMBINED DOCUMENTS



COMMONWEALTH OF VIRGINIA  
COUNTY OF HENRICO

GREGORY H. REVELS CBO  
Building Official

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

**Notice of Structure Unfit for Human Occupancy**  
**9-26-2014**

Mark Riley  
1920 Parkland Dr  
Lynchburg VA 24503-3048

RE: INSPECTION OF 5400Nine Mile Rd (COD2014-00508)

Pursuant to my September 26, 2014 inspection the building located at the above referenced location have been declared unfit for human occupancy in accordance with Section 105.1 of the 2012 Virginia Maintenance Code (VMC) due to the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary, heating facilities or other essential equipment. Below is a list of the VMC violations that exist throughout the structure located on the property. I have also listed the applicable VMC code section for your use.

**Building Exterior**

- Replace all Damaged siding
- Remove all peeling paint on exterior surfaces
- Paint all bare, exposed, untreated wood throughout exterior
- Repair all damaged screens, install on all other windows
- Repair all roof leaks.
- Properly terminate or remove exposed wiring on rear of the house, and junction box on front porch
- Repair or replace broken window kitchen window, rear facing
- Replace missing downspouts on gutters throughout
- Shed-replace all damaged siding on shed
- Shed-Remove all peeling paint throughout.
- Shed-Paint all bare, exposed, untreated wood on shed.

**VMC Code Sections for Exterior Violations Listed Above**

**304.1 EXTERIOR STRUCTURE General.** The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

**304.2 Protective treatment.** 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

4301 E. PARHAM ROAD, HENRICO, VA 23228 / P.O. BOX 90775 / HENRICO, VIRGINIA 23273-7032  
Telephone (804)501-4374 Fax (804) 501-4984

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.

**304.6 Exterior walls.** All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

**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.

**304.13 Window, skylight and door frames.** Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

**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.

### Interior

- \*Permits are required prior to performing repairs, inspections required prior to concealment\*
- Obtain permit and inspections for electrical wiring, walls, doors and HVAC in Attic or remove same, \*
- Repair damaged floor in kitchen and first floor bathroom, \*
- Repair damaged floor/ceiling joists on 2nd floor/attic, \*
- Attic converted into 3 bedrooms; these rooms do not meet the habitable space requirement.
- During my inspection on 9/26 there were 12 occupants in the house, the restate record shows only three bedrooms. The two bedrooms on the bottom floor must converted to living room and dinning room to meet the minurim area requirements of the VMC.
- Repair damage chinmeny in Attic area.
- Removed keyed locks on all bedroom doors,
- Remove, repair or replace all fixtures in the first floor bathroom and provide water/sewer service to the fixtures,
- Install smoke detectors in all bedrooms and in the vicinity of bedroom doors,
- HVAC docs not operate, fuse was removed by the owner.
- Hot water heater show signs of leaking or discharging, repair or replace,
- Room next to bathroom does not meet the habitable space requirements, estimated at 55sqft, no electrical outlets, on ventilation, no illumination, cannot be occupied,
- Properly repair or replace all damaged interior doors.
- Signs of water leaking above steps seen from the first floor,
- Properly repair all ceiling and wall damaged,
- Paint throughout interior.

system or vent system (vi) electrical wiring, (vii) fire protection system, mechanical system, or fuel supply system, or (viii) any equipment regulated by the USBC.

2. For change of occupancy, application for a permit shall be made when a new certificate of occupancy is required under Section 103.3.
3. Movement of a lot line that increases the hazard to or decreases the level of safety of an existing building or structure in comparison to the building code under which such building or structure was constructed.
4. Removal or disturbing of any asbestos containing materials during the construction or demolition of a building or structure, including additions.

### Order to Vacate Structures and Abate Violations

Notice is hereby served in accordance with Sections 105.4 and 105.6 of the VMC that the structures are deemed unfit for human habitation and shall be immediately vacated and secured against entry. I have posted placards on the building declaring the structures unfit for use and occupancy. Entering the structures is prohibited except as authorized by the Department of Building Construction and Inspections to perform repairs or demolish the structures. The placards shall not be removed until the structures have been deemed safe for use and occupancy by the Department of Building Construction and Inspections. Please be reminded that construction permits are required by USBC Section 108.1 prior to performing work regulated by the USBC (See Section 108.1 listed above), including demolition of the structures. Pursuant to Section 105.1 of the VMC all exterior code violations shall be abated within 30 days from receipt of this notice.

Failure to comply with this notice will result in this matter being referred to the County Attorney to initiate the appropriate legal proceedings to restrain, correct or abate the violations. Compliance deadlines may be extended if warranted by extenuating circumstances. You may request an extension by phone or by writing a brief letter that explains the reason that an extension is needed. All requests for extensions must be received prior to the deadline date.

Pursuant to Section 106.5 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 Uniform Statewide Building Code. The applicant shall submit a written request of appeal to the local Board of Building Code Appeals.

If there are any questions, I can be reached at (804) 349-2085.

Sincerely,



Jerry Buresh  
Building Inspector/Existing Structures



COMMONWEALTH OF VIRGINIA  
COUNTY OF HENRICO

GREGORY H. REVELS CBO  
Building Official

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

**Notice of Structure Unfit for Human Occupancy**  
**10-8-2014**

Mark Riley  
1920 Parkland Dr  
Lynchburg VA 24503-3048

RE: INSPECTION OF 5400Nine Mile Rd (COD2014-00508)

Pursuant to my October 3, 2014 inspection the building located at the above referenced location has been declared unfit for human occupancy in accordance with Section 105.1 of the 2012 Virginia Maintenance Code (VMC) due to the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary, heating facilities or other essential equipment. This inspection was performed in response to your request for an extension of the compliance deadline listed in my September 26, 2014 notice (copy enclosed) and confirmation of the work that must be completed prior to re-occupancy of the structure. This notice supersedes and replaces the notice issued on September 26, 2014. My October 3, 2014 inspection confirms the structure is unfit for occupancy due to the following VMC violations. These violations shall be abated prior to any re-occupancy of the structure.

- The occupancy of the structure has been converted without a permit from a 3 bedroom single family dwelling to a 9 bedroom boarding house . This change of occupancy requires zoning approval and may impose additional building code requirements based on the number of occupants (e.g. the installation of fire sprinklers and interconnected smoke detectors supplied by permanent power with battery backup, etc.). Occupancy of the structure as a boarding house is prohibited unless a new Certificate of Occupancy is issued for such use.
- Maintaining the structure as a single family dwelling requires the removal of all keyed locks on the interior bedroom doors; and the two bedrooms on the first floor must revert back to living and dining room spaces to meet the minimum area requirements of the VMC.
- The attic has been converted into bedrooms that do not comply with the habitable space requirements of the building code or the VMC. The rooms lack interconnected smoke detectors, emergency egress windows, adequate space, ceiling heights, floor landings and ventilation. There is no guard to protect occupants from falling through the floor opening at the ladder. HVAC, electrical and structural work have been performed without permits and in violation of the Virginia Construction Code. All HVAC and electrical work serving the attic shall either be removed, or permits and approved inspections shall be obtained for their installation. \*
- The structural damage to the attic floor, including the cut floor joists at the opening serving the ladder to the attic. A permit shall be obtained to repair the structural damage and the work shall be inspected and approved.\*
- The floors in the kitchen and bathroom on the first floor are structurally damaged and unsound. A permit shall be obtained to repair the damaged floors and the work shall be inspected and approved prior to installing floor coverings.\*

- The drain pipe from the tub in the first floor bathroom has been disconnected and discharging sewer gas to the inside of the dwelling. The drainpipe shall either be properly connected or capped.
- Properly install smoke detectors in all bedrooms and in the vicinity of bedroom doors,
- The water heater is leaking or discharging onto the kitchen floor. Repair or replace the water heater.
- The room located next to the first floor bathroom does not meet the habitable space requirements for use as a bedroom (e.g. minimum area, no electrical outlets, no ventilation, no illumination) and shall not be occupied as a bedroom.

\*Denotes that permits are required prior to performing the listed repairs, and inspections must be approved prior to installing any concealing materials.

### Interior Maintenance Violations

The following are violations of the VMC that do not render the structure unfit for occupancy, but do require correction in accordance with Section 103.2 of the VMC. These interior violations shall be abated prior to any re-occupancy of the structure.

- Holes in the chimney have been stuffed with rags and other combustible materials . The rags and combustible materials shall be removed and the chimney properly repaired.
- The HVAC units are required to be maintained in operable condition. The fuses for the HVAC units have been removed and shall be replaced.
- Repair or replace all damaged interior doors.
- The ceiling and wall coverings throughout the structure are damaged or missing. Properly repair or replace all damaged ceiling and wall coverings throughout the structure,
- The fixtures in the first floor bathroom are either damaged or inoperable.. Either remove, repair or replace the fixtures in the first floor bathroom. Restore water and sewer service to the fixtures if they are not removed
- Remove "S" trap under sink and replace with approved "P" trap

### Exterior Maintenance Violations

Pursuant to Section 105.1 of the VMC the following exterior code violations shall be abated within 30 days from receipt of this notice.

- Replace all Damaged siding
- Remove all peeling paint on exterior surfaces
- Paint all bare, exposed, untreated wood throughout exterior
- Repair all damaged screens, install on all other windows
- Repair all roof leaks.
- Properly terminate or remove exposed wiring on rear of the house, and junction box on front porch
- Repair or replace broken window kitchen window, rear facing
- Replace missing downspouts on gutters throughout
- Shed-replace all damaged siding on shed
- Shed-Remove all peeling paint throughout.

- Shed-Paint all bare, exposed, untreated wood on shed.

### VMC Code Sections for Exterior Violations Listed Above

**304.1 EXTERIOR STRUCTURE General.** The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

**304.2 Protective treatment.** 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.

**304.6 Exterior walls.** All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

**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.

**304.13 Window, skylight and door frames.** Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

**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.

### VMC Code Sections for Interior Violations Listed Above

**305.1 Interior Structure General.** The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

**305.2 Structural members.** All structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

**305.3 Interior surfaces.** All interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.

**305.6 Interior doors.** Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks as intended by the manufacturer of the attachment hardware.

**402.1 Habitable spaces.** Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total glazed area for every habitable space shall be 8 percent of the floor area of such room. Wherever walls or other portions of a structure face a window of any room and such obstructions are located less than 3 feet (914 mm) from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.

**403.1 Habitable spaces.** Every habitable space shall have at least one openable window. The total openable area of the window in every room shall be equal to at least 45 percent of the minimum glazed area required in Section 402.1.

**403.2 Bathrooms and toilet rooms.** Every bathroom and toilet room shall comply with the ventilation requirements for habitable spaces as required by Section 403.1, except that a window shall not be required in such spaces equipped with a mechanical ventilation system. Air exhausted by a mechanical ventilation system from a bathroom or toilet room shall discharge to the outdoors and shall not be recirculated.

**404.2 Minimum room widths.** A habitable room, other than a kitchen, shall not be less than 7 feet (2134 mm) in any plan dimension. Kitchens shall have a clear passageway of not less than 3 feet (914 mm) between counter fronts and appliances or counter fronts and walls.

**404.3 Minimum ceiling heights.** Habitable spaces, hallways, corridors, laundry areas, bathrooms, toilet rooms and habitable basement areas shall have a clear ceiling height of not less than 7 feet (2134 mm).

**404.4 Bedroom and living room requirements.** Every bedroom and living room shall comply with the requirements of Sections 404.4.1 through 404.4.5.

**404.5 Overcrowding.** Dwelling units shall not be occupied by more occupants than permitted by the minimum area requirements of Table 404.5

**TABLE 404.5**

MINIMUM AREA REQUIREMENTS SPACE	MINIMUM AREA IN SQUARE FEET		
	1-2 occupants	3-5 occupants	6 or more occupants
Living room <sup>a,b</sup>	120	120	150
Dining room <sup>a,b</sup>	No requirement	80	100
Bedrooms	Shall comply with Section 404.4.1		

**404.5.2 Combined spaces.** Combined living room and dining room spaces shall comply with the requirements of Table 404.5 if the total area to that required for separate rooms and if the space is located so as to function as a combination living room/dining room

**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.

**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.

**504.2 Fixture clearances.** Plumbing fixtures shall have adequate clearances for usage and cleaning.

**603.1 Mechanical appliances.** All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

**605.1 Installation.** All electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and approved manner.

**704.2 Smoke alarms.** Single or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and in dwellings not regulated in Group R occupancies, regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
2. In each room used for sleeping purposes.
3. In each story within a dwelling unit, including basements and cellars but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

### Virginia Construction Code Requirements to Obtain Permits

**108.1 When applications are required.** Application for a permit shall be made to the building official and a permit shall be obtained prior to the commencement of any of the following activities, except that applications for emergency construction, alterations or equipment replacement shall be submitted by the end of the first working day that follows the day such work commences. In addition, the building official may authorize work commence pending the receipt of an application or the issuance of a permit.

1. Construction or demolition of a building or structure. Installations or alterations involving (i) the removal or addition of any wall, partition or portion thereof, (ii) any structural component, (iii) the repair or replacement of any required component of the fire or smoke rated assembly, (iv) the alteration of any required means of egress system, (v) water supply and distribution system, sanitary drainage system or vent system (vi) electrical wiring, (vii) fire protection system, mechanical system, or fuel supply system, or (viii) any equipment regulated by the USBC.
2. For change of occupancy, application for a permit shall be made when a new certificate of occupancy is required under Section 103.3.
3. Movement of a lot line that increases the hazard to or decreases the level of safety of an existing building or structure in comparison to the building code under which such building or structure was constructed.
4. Removal or disturbing of any asbestos containing materials during the construction or demolition of a building or structure, including additions.

## Order to Vacate Structures and Abate Violations

Notice is hereby served in accordance with Sections 105.4 and 105.6 of the VMC that the structures are deemed unfit for human habitation and shall be immediately vacated and secured against entry. I have posted placards on the building declaring the structures unfit for use and occupancy. Entering the structures is prohibited except as authorized by the Department of Building Construction and Inspections to perform repairs, demolish the structures or for the prior occupants to remove their personal belongings. The placards shall not be removed until the structures have been deemed safe for use and occupancy by the Department of Building Construction and Inspections. Please be reminded that construction permits are required by USBC Section 108.1 prior to performing any work regulated by the USBC (See Section 108.1 listed above), including demolition of the structures.

Failure to comply with this notice will result in this matter being referred to the County Attorney to initiate the appropriate legal proceedings to restrain, correct or abate the violations. Compliance deadlines may be extended if warranted by extenuating circumstances. You may request an extension by phone or by writing a brief letter that explains the reason that an extension is needed. All requests for extensions must be received prior to the deadline date.

Pursuant to Section 106.5 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 Uniform Statewide Building Code. The applicant shall submit a written request of appeal to the local Board of Building Code Appeals at the return address listed on this notice.

If there are any questions, I can be reached at (804) 349-2085.

Sincerely,



Jerry Buresh  
Building Inspector/Existing Structures

Mark F. Riley  
1920 Parkland Dr  
Lynchburg, VA 24503

Oct. 12 - 2014

Gregory H. Revets CBO  
Buildings Official  
Commonwealth of Virginia  
County of Henrico

RECEIVED  
OCT 16 2014  
County of Henrico  
Building Inspections

RE: Inspections of 5400 Nine Mile Rd (COB 2014-00508)  
First inspection Sept. 26-2014 Second inspection Oct. 03-14

Due to several inadequacies in Jerry Buresh - Buildings inspector / Existing Structures and previous inspections with conflicting results and no definite answer to what will bring this property out of condemnation, I hereby request immediately, pursuant to section 106.5 Virginia Uniform Statewide Building Code an appeal to the local board of Building Code appeals with your panel of judges to review this situation

Please have Mr. Paul Johnson at the review meetings if at all possible.

If you have any questions or concerns you can reach me at 434-386-4812

Regards  
Property Owner / Home owner  
Mark Riley

Please forward enclosed copy to Jerry Buresh.

STAFF TRANSCRIPTION OF HAND-WRITTEN SUBMITTAL

Mark L. Riley  
1920 Parkland Dr  
Lynchburg, VA 24503

Oct. 12-2014

Gregory H. Revels, CBO  
Building Official  
Commonwealth of Virginia  
County of Henrico

RE: Inspections of 5400 Nine Mile Rd (COD 2014-00508)  
First inspection Sept. 26-2014 Second inspection Oct. 03-14

Due to several inadequacies in Jerry Buresh-Building inspector, existing structures and previous inspections with conflicting results and no definite answer to what will bring this property out of condemnation, I hear by request immediately, pursuant to section 106.5 Virginia Uniform Statewide Building Code an appeal to the local board of building code an appeal to the local board of building code appeals with your panel of judges to review this situation.

Please have Mr. Paul Johnson at the review meeting if at all possible.

If you have any questions or concerns you can reach me at 434-386-4812.

Regards  
Property Owner/Home Owner  
Mark Riley

Please forward enclosed copy to Jerry Buresh



COMMONWEALTH OF VIRGINIA  
COUNTY OF HENRICO

BOARD OF BUILDING  
CODE APPEALS

Resolution  
Local Board of Building Code Appeals

County of Henrico,  
Virginia

Whereas, an appeal was filed to this Board on October 16, 2014 by Mr. Mark Riley concerning the inspection of 5400 Nine Mile Rd in Henrico County (case number COD2014-00508), and

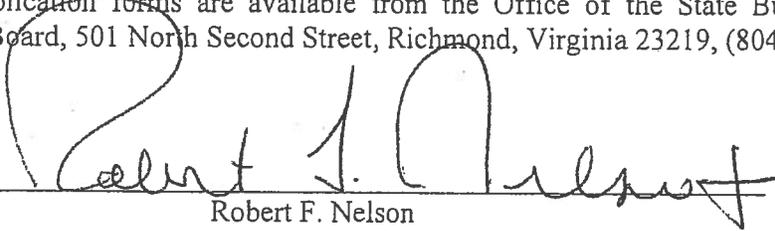
Whereas, such inspection resulted in the issuance of a Notice of Violation dated October 8, 2014 that declared the structure to be Unfit for Human Occupancy in accordance with Section 105.1 of the Virginia Maintenance Code due to the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary, heating facilities or other essential equipment, and

Whereas, such appeal was filed pursuant to Section 106.5 of the Virginia Maintenance Code, and this Board conducted a public hearing on November 10, 2014 to receive information and testimony relevant to the appeal, and

Now therefore be it resolved, that the Board of Building Code Appeals found no basis to rule on an appeal because the Board did not received an appeal for cited violations.

Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to such Board within 21 calendar days. Application forms are available from the Office of the State Building Code Technical Review Board, 501 North Second Street, Richmond, Virginia 23219, (804)-371-7150.

Chairman: \_\_\_\_\_

  
Robert F. Nelson

Date: \_\_\_\_\_

NOVEMBER 11, 2014

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

MARK L. Riley  
1920 PARKLAND DR.  
Lynchburg, VA. 24503 434-386-4812

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

Henrico County Building Inspections  
4301 E PARTAM ROAD, Henrico VA.  
PO Box 90775 23273 Jerry Buresh Building Inspector  
Gregory H. Revels C.B.O. Building official 804-501-4374

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 1<sup>st</sup> day of December, 2014, 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: Mark L. Riley

Name of Applicant: MARK L. Riley  
 (please print or type)

Commonwealth of Virginia  
State Building Codes Office and Office of the State Technical  
Review Board

On Sept 22-2014 Mr. Johnson of Henrico County Community  
Development and Mr. Buresh. Building inspector arrived at my home  
at 5400 Nunn Mite Rd and requested to inspect my home. I was not  
there so the person I had in place to take care of things told Mr. Johnson  
she could not let him in without the owners permission - which is true. She  
called me and I spoke with Mr. Johnson and scheduled an apt. to inspect  
my home on Oct. 22-2014. Mr. Buresh was standing right there with  
Mr. Johnson and I knew the inspection would be Oct. 22-2014. I have never  
denied Henrico entry to inspect my home. I planned for Oct 22-2014 because  
I knew I had some repairs to be made and had spoken with the people that was  
going to do the work and it would have been finished by Oct. 22-2014. The reason I  
did this was because I had taken three people to court for eviction on Sept 5-2014  
one person did not show so I received immediate possession. But of course he  
knew he did not have to leave til the sheriff came to evict him which was to be Oct. 9-2014  
the other two was given ten days to appeal - why I have no idea. I was asking for no  
money - so the sheriff did not receive their writ of possession til Sept 16-2014 - the  
sheriff could not evict til Oct 9-2014 - mean while they are destroying my house -  
like turning the water heater so high it burned several elements - burst pipes -  
damaged pipes & my floor - knocking holes in the walls & ceilings and holes in the  
floor - tearing the thermostat off the wall - breaking windows & doors. I had to call  
my plumber about 10 times and even he said it was being done on purpose. So I did  
not want to repair anything til they left. It would only been broken again.  
Then on Sept 26-2014 Mr. Buresh decided he was going to inspect my home  
with or without my permission - and by coming in the back door let in  
by the the people that had been evicted and were let around by the three  
people that technically were an wanted guest - they had already passed their  
ten days right of appeal. So Mr. Buresh has not believe he has to follow state law  
so I think all of his findings should be thrown out and my name returned to me  
when I called his supervisor he knew Mr. Buresh was in the wrong and went  
straight to Mr. Reveals - the chief building official - which must not know state  
law either because he saw nothing wrong with what Mr. Buresh did - it appealed  
to the County appeals board - they said it was a legal matter - so now I am  
appealing to the State Review Board. Any help you can give me will be  
greatly appreciated. I thank you for your help & consideration in getting  
this matter resolved.

Mark L. Riley

STAFF TRANSCRIPTION OF HAND-WRITTEN SUBMITTAL

Dec. 01-2014

Commonwealth of Virginia  
State Building Codes Office and Office of the State Technical Review Board

On Sept 22-2014 Mr. Johnson of Henrico County Community Development and Mr. Buresh. Building inspector arrived at my home at 5400 Nine Mile Rd and requested to inspect my home. I was not there so the person I had in place to take care of things told Mr. Johnson she could not let him in without the owner permission-which is me. She called me and I spoke with Mr. Johnson and scheduled an apt to inspect my home on Oct. 22-2014. Mr. Buresh was standing right there with Mr. Johnson and knew the inspection would be Oct. 22-2014. I have never denied Henrico entry to inspect my home. I planned for Oct 22-2014 because I knew I had some repairs to be made and had spoken with the people that was going to do the work and it would have been finished by Oct. 22-2014. The reason I did this was because it had taken three people to court for eviction on Sept. 5-2014 one person did not show so I received immediate possession, but of course he knew he did not have to leave till the sheriff came to evict him which was to be Oct. 9-2014. The other two was given ten days to appeal - why I have no idea. I was asking for no money, so the sheriff did not receive their writ of possession till Sept. 16-2014. The sheriff could not evict till Oct. 9-2014 - Meanwhile they are destroying my house - like turning the water heater so high it burns several elements - burst pipes - damaged pipes in my floor - knocking holes in my walls and ceilings and holes in the floor-tears thermostat off the wall - breaking windows and doors. I had to call my plumber about 10 times and even he said it was being done on purpose, so I did not want to repair anything till they left. It would only be broken again. Then on Sept. 26-2014, Mr. Buresh decided he was going to inspect my home with or without my permission - and by coming in the back door let in by the people that had been evicted and were led around by the 3 people that technically were unwanted guests. They had already passed their 10 days right of appeal. So Mr. Buresh does not believe he has to follow state law so I think all of his findings should be thrown out and my home returned to me. When I called his supervisor he knew Mr. Buresh was in the wrong and went straight to Mr. Revels, the Chief Building Official - which must not know state law either because he saw nothing wrong with what Mr. Buresh did. I appealed to the county appeals board they said it was a legal matter. So now I am appealing to the state appeals board. Any help you can give me will be greatly appreciated. Thank you for your help and consideration for getting the matter resolved.

Mark L. Riley



COMMONWEALTH OF VIRGINIA  
COUNTY OF HENRICO

GREGORY H. REVELS, CBO  
Building Official

H. BOLMAN BOWLES, P.E.  
Deputy Building Official

May 29, 2015

Mr. Vernon Hodge, Secretary  
State Building Code Technical Review Board  
Main Street Center  
600 E. Main St., Suite 300  
Richmond, Va. 23219

Re: Appeal Case No. 14-14

Dear Mr. Hodge:

I have enclosed additional submittals for the Review Board's consideration of the referenced appeal. The submittals include arguments offered on behalf of Henrico County, corrections to the staff document, a letter from the Chair of the Local Appeals Board and County land and zoning records pertaining to the property.

Please feel free to call me at 804/501-4374 if you have any questions about these enclosures.

Sincerely,

Gregory H. Revels  
Building Official

VIRGINIA:

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

IN RE: Appeal of Mark L. Riley  
Appeal No. 14-14

ARGUMENT OF THE COUNTY OF HENRICO

**Grounds to Hear Cited Violations**

The Board has no jurisdiction to hear Mr. Riley's appeal of the cited violations for two reasons. First, under Va. Code §36-105(A), "No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals." In the Resolution of the Local Board of Building Code Appeals dated November 11, 2014, the Board stated "the Board of Building Code Appeals found no basis to rule on an appeal because the Board did not received [sic] an appeal for cited violations." Since the Local Board did not rule on the appeal of the cited violations, the State Building Code Technical Review Board does not have jurisdiction to do so. Second, as stated by the Local Board, Mr. Riley did not submit an appeal to the Local Board appealing the substance of the cited violations within the 14 day appeal window as required by Virginia Maintenance Code Section 106.5. He only challenged the procedure under which the inspection was conducted. Additionally, after the Local Board repeatedly asked him if he would like to appeal the cited violations at the local hearing, he verbally declined the opportunity to do so. Therefore, the Board does not have authority to rule on the cited violations and should not do so.

If the Board determines the cited violations have been appealed, the hearing should be remanded back to the Local Board. Section 36-105(A) of the Code of Virginia and Section

106.8 of the Virginia Maintenance Code both require that appeals be decided by the Local Board prior to being heard by the TRB. The Local Board is in the best position to evaluate the technical merits of the violations and procedurally should be given the opportunity to do so.

### **Right of Entry**

On September 26, 2014, County Inspector Jerry Buresh was invited into the home at 5400 Nine Mile Road by tenants. The search Inspector Buresh conducted only covered the areas to which the tenants had access and complied with the requirements of the Virginia Maintenance Code and the Fourth Amendment of the United States Constitution. Inspector Buresh was granted access by a tenant under Section 104.1 of the 2012 Virginia Maintenance Code and followed proper procedure throughout the inspection. Section 104.1 allows inspectors to obtain an inspection warrant if they are unable to gain access to a property due to an unwilling owner, occupant, or tenant refusing access. Such a warrant was not appropriate in this case. An inspection warrant is an available tool for an inspector to use if they are denied access and have no other means to access the property, but is not required just because a single party with access objects to entry. In fact, the Code encourages inspectors to gain entry through consent of “the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of an inspection warrant under this section.” Clearly, the inspection warrant is intended to serve as a last resort when entry cannot be obtained through any other means. Because Inspector Buresh was able to obtain entry through other means, the warrant was not necessary. Interpreting the code section to require a warrant in these situations would be harmful to tenant safety, as a negligent landlord could delay the entry of inspectors and prevent discovery of dangerous code violations.

Additionally, case law addressing the Fourth Amendment supports the validity of Inspector Buresh's actions. According to Supreme Court case law, a denial of access from one party with access only overrides permission to enter granted by another party with access when both parties are physically present. In *Fernandez v. California*, 134 S.Ct. 1126 (2014), the Supreme Court found that a search of a residence conducted by police was constitutional when one occupant consented to the search even after another occupant denied the police access before being removed from the scene. The defendant in the case who had objected to the search tried to argue that his objection to the search remained in effect until he withdrew his objection even after he left the scene. *Id.* at 1135. The Court soundly rejected this argument as practically unworkable and reasserted that for an objection to a search over another individual's consent to be valid, the objecting individual must be present at the time. *Id.* Additionally, in *United States v. Matlock*, 94 S.Ct. 988 (1974), the Supreme Court found that "the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared." *Id.* at 988. In the present case, Mr. Riley was not present at the September 26, 2014 inspection and both Mr. Riley and the tenants have the right to grant access to the property. Therefore, under Supreme Court precedent, the tenants' permission to enter overrides Mr. Riley's previous objection and the inspection was valid under the Fourth Amendment.

Mr. Riley also claims that the tenants that gave Inspector Buresh access to the structure were in fact not tenants but uninvited guests as they had already been evicted. This assertion is factually untrue. The inspection in question was conducted on September 26, 2014 and the notice of eviction (Exhibit A) reflects an eviction date of October 9<sup>th</sup>, 2015. Therefore, the tenants were still lawfully present in the home and had the right to give access to Inspector

Buresh. Moreover, Inspector Buresh was never informed of the tenants' pending eviction making the inspection valid even if they had been evicted. Supreme Court precedent indicates that law enforcement inspections conducted under the incorrect but reasonable assumption that the person granting entry had the authority to do so are valid. In *Illinois v. Rodriguez*, 497 U.S. 166 (1990), the Supreme Court found that even though an individual who gave police consent to search a residence was no longer a resident, the search was lawful because the police reasonably believed that the individual was a resident at the time of the search. *Id.* at 188-89. In this case, the tenants had access to the home and there was no other indication that they had been evicted. Therefore, Inspector Buresh's assumption that they could grant right of entry was reasonable and the search was legal.

Overall, Inspector Buresh followed all required laws and procedures in conducting his inspection of the residence and therefore the notice of violation produced based on the inspection should stand.

### **Corrections to Review Board Staff Document**

The following information is offered to the Suggested Statement of Case History and Pertinent Facts outlined in the staff document provided to the Board.

- A) Item 2 of the Staff Document indicates the house at 5400 Nine Mile Rd was "...rented out, allegedly to up to nine unrelated persons...". At the time of the September 26, 2014 inspection the house was occupied by 12 individuals, occupying 9 separate bedrooms. The County encloses a copy of the Real Estate record and zoning classification for the property at 5400 Nine Mile documenting the structure is recorded as a 3 bedroom single

family dwelling, and the zoning classification prohibits use of the property as a boarding house.

- B) Item 4 of the Staff Document states that County inspectors contacted the County's legal counsel prior to conducting the inspection. Legal counsel subsequently authorized the inspection to be performed pursuant to Constitutional authority and Section 104.1 of the Virginia Maintenance Code. Item 4 also states that "Riley states [the tenants] were already evicted but that the County sheriff had not yet served papers on." The County encloses a copy of an Eviction Notice noting the date of eviction as October 9<sup>th</sup>, 2015 that was served on one of the tenants that had requested the inspection of the structure.



COMMONWEALTH OF VIRGINIA  
COUNTY OF HENRICO

BOARD OF BUILDING  
CODE APPEALS

May 26, 2015

Mr. Vernon Hodge, Secretary  
State Building Code Technical Review Board  
Main Street Center  
600 E. Main St., Suite 300  
Richmond, VA 23219

Re: Appeal Case No. 14-14

Dear Mr. Hodge:

I am writing you in response to the Review Board Staff document on behalf of the Henrico County Local Board of Building Code Appeals to clarify the proceedings of the November 10, 2014 local board hearing concerning this appeal. I specifically write to clarify for the TRB that the appellant, Mr. Mark Riley, was repeatedly asked by the local board members whether he desired the board to rule on the merits of the code violations listed in the October 8, 2014 Notice of Structure Unfit for Human Occupancy that was issued by Existing Structures Inspector Jerry Buresh. Upon each such request Mr. Riley declined to have the board consider the merits of the violations cited in the October 8 notice.

The language in the final resolution of the appeal was carefully crafted by the local board members based on Mr. Riley's affirmation that the code violations cited in the notice were not the subject of his appeal request.

I hope the TRB finds this information useful in their consideration of this matter. Please call me at 804/236-0190 if you should have any further questions.

Sincerely,

Robert F. Nelson, P.E.  
Chairman

State of Virginia  
County of NORTHUMBERLAND

Sworn to (or affirmed) and subscribed before me this 27 day of MAY, 2015,

by ROBERT F NELSON

Personally Known  Produced Identification/Type and # of ID

Signature of Notary





**COUNTY OF HENRICO - FINANCE DEPARTMENT  
REAL ESTATE ASSESSMENT DIVISION**

Address: 4301 E. Parham Rd.  
Henrico, VA 23273-2745  
Phone: 804-501-4300  
Fax: 804-501-5420

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Base Transfer & Assessment

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**Base Information**

Parcel ID 815-725-1195  
Vision PID # 96312  
State Code Resid (Sub)  
Use Code 223 Res - Imprv < 5 Acres  
Tax Type Taxable  
Zoning R-3  
Tax Dist Regular  
Magisterial Varina  
Subdivision Acreage  
Section  
Block  
Lot .916 acres

Parcel Address 5400 NINE MILE RD  
Appraiser F  
Neighborhood 6-ACR -  
Acreage 0.916  
Owner (Jan 1) RILEY MARK  
Owner (Cur) RILEY MARK  
Mailing Address  
1920 PARKLAND DR  
LYNCHBURG VA  
Zip 24503-3048  
Old Map # 01470A0000 0054  
Pre 1992 Map # 12 A1 17  
Map Page # 231

**Image**



Last Photo Update: 04/05/2014

**Residential Information**

Style 01 Colonial No. of Stories 2 Sq Ft Finished Living 1,680  
Year Built 1900 Total Rooms 6 Finished Attic 0  
Grade D+2 Bedrooms 3 Unfinished Living 0  
Ext. Walls 03 Asbestos Full Bathrooms 1 Basement 0  
Roof 5 Metal Half Bathrooms 0 Finished Basement 0  
Heating 02 Forcad Air Fireplace(s) 0 Foundation Type 1 Crawl  
Air Cond. 01 Yes No. of Chimneys 0 Basement Garage 0

**Last Transfer**

[Additional Transfer & Assessments](#)

Sale Date	Sale Price	Deed Book	Page	Previous Owner	Sale Comment	# of Parcels
02/10/2004	\$54,950	3615	1026	HOGAN GLENN R	Non-Qualified	1

**Current Assessment**

Year	Date	Land	Land Use	Improvements	Total
2015	02/02/2015	\$41,000		\$16,700	\$57,700

**Additions, Outbuildings and Features**

Type	Improvement	Units/Area
Addition	Porch Covered	122
Addition	Porch Encl Finished	72
Outbuilding	Garage - 2C Det	600

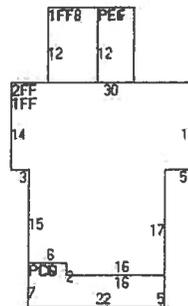
**Land Information**

Type	# Units	Unit Type	Sqft	Zoning
G6	1	LOTS	0	R-3

**Notes**

7-5-2000 3.6464 acres to a separate card per DB 3013-1635 ( now par # 141-A-83N) Beging acreage 3.738 acres, changed to .916 acres. 4-5-02-DB-3236-2456-(Foreclosure).....

1 - 1



[Large Image](#) [Large Sketch](#) [Multiple Images](#)

**Sketch Details**

Code	Desc	Gross	Living
1FF	1st Fl Finished	878	878
2FF	2nd Fl Finished	782	782
PCO	Porch Covered	122	0
PEF	Porch Encl Finished	72	0
		1 - 4	

Map

**Legal Disclaimer:** Non-confidential real estate assessment records are public information under Virginia law, and Internet display of non-confidential property information is specifically authorized by Virginia Code 58.1-3122.2. While the Real Estate Division has worked to ensure that the assessment data contained herein is accurate, Henrico County assumes no liability for any errors, omissions, or inaccuracies in the information provided or for any reliance on any maps or data provided herein. Please consult County records in the Real Estate Division for official information.

Click [Real Estate Comments](#) to submit comments or corrections.



**COUNTY OF HENRICO - FINANCE DEPARTMENT  
REAL ESTATE ASSESSMENT DIVISION**

Address: 4301 E. Parham Rd.  
Henrico, VA 23273-2745  
Phone: 804-501-4300  
Fax: 804-501-5420

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Base  Transfer & Assessment

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**Parcel Information**

Parcel ID 815-725-1195 Parcel Address 5400 NINE MILE RD

**Transfer History**

Sale Date	Sale Price	Deed Book	Page	Owner	Sale Comment	# of Parcels
02/10/2004	\$54,950	3615	1026	RILEY MARK	Non-Qualified	1
04/05/2002	\$35,000	3236	2459	HOGAN GLENN R		1
04/05/2002	\$50,487	3236	2456	DOOLEY LOUISE TUCK	Forced Sale	1
07/05/2000	\$51,000	3013	1635	CUMBER CHRISTOPHER R	Non-Qualified	1
	\$0	W0069	1582	DOOLEY ETHEL L TUCK S		

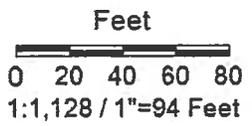
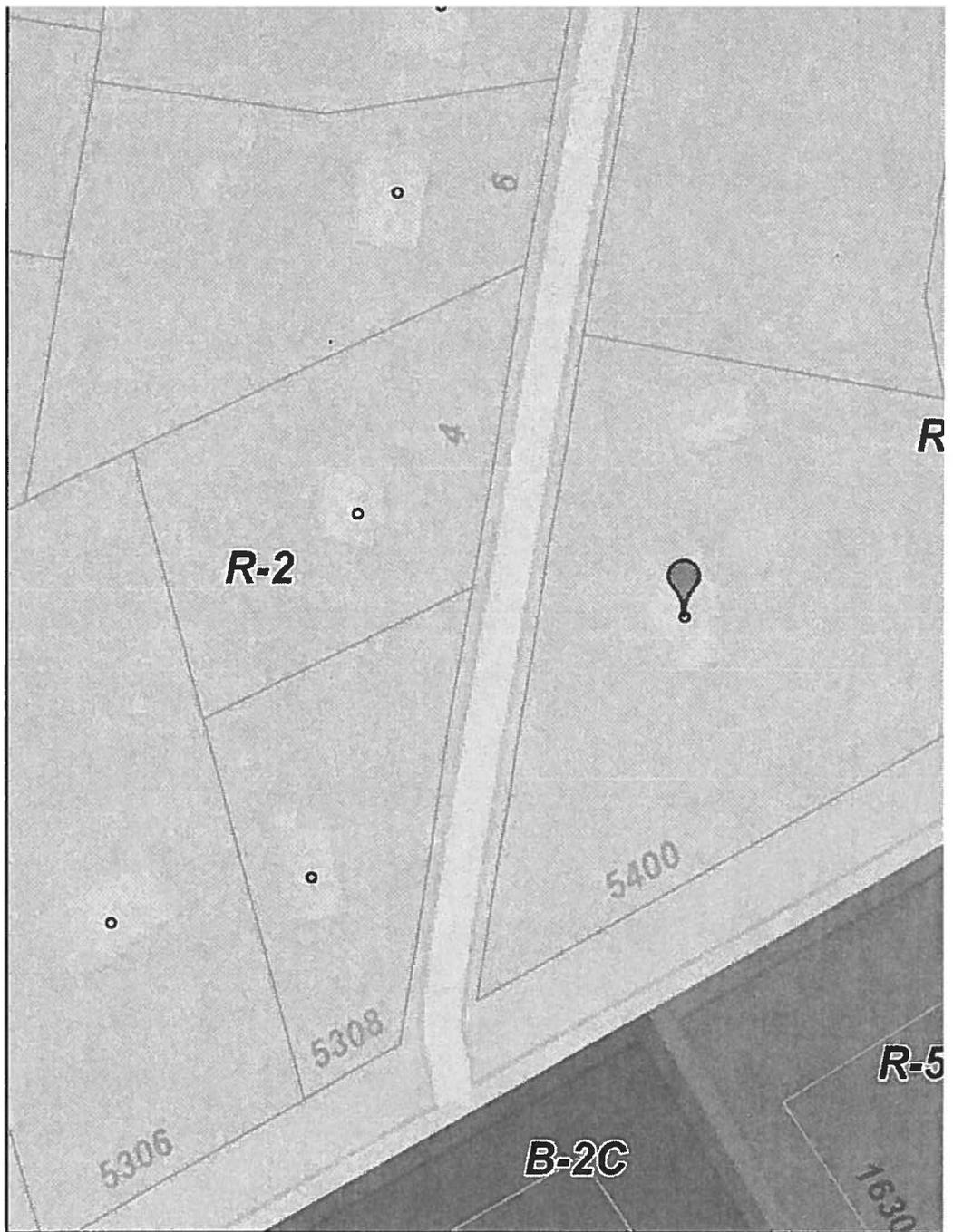
**Assessment Information**

Year	Date	Land	Land Use	Improvements	Total
2015	02/02/2015	\$41,000		\$16,700	\$57,700
2014	01/30/2014	\$41,000		\$49,300	\$90,300
2013	02/05/2013	\$41,000		\$49,300	\$90,300
2012	02/17/2012	\$41,000		\$49,300	\$90,300
2011	03/10/2011	\$41,000		\$61,600	\$102,600
2010	12/22/2009	\$41,000		\$61,600	\$102,600
2009	12/30/2008	\$41,000		\$73,500	\$114,500
2008	12/31/2007	\$41,000		\$73,500	\$114,500
2007	11/27/2006	\$36,400		\$65,700	\$102,100
2006	12/02/2005	\$27,300		\$64,200	\$91,500
2005	12/15/2004	\$22,800		\$51,400	\$74,200
2004	02/03/2004	\$22,800		\$48,000	\$70,800
2003	01/21/2003	\$22,800		\$42,400	\$65,200
2002	02/01/2002	\$17,000		\$48,300	\$65,300
2001	09/12/2000	\$17,000		\$35,100	\$52,100
2000	03/22/1999	\$33,900		\$35,100	\$69,000
1999	04/08/1998	\$33,900		\$35,100	\$69,000
1998	11/24/1997	\$33,900		\$35,100	\$69,000
1997	01/01/1997	\$32,000		\$28,800	\$60,800
1996	01/01/1996	\$32,000		\$28,800	\$60,800
1995	01/01/1995	\$32,000		\$28,800	\$60,800
1994	01/01/1994	\$32,000		\$28,800	\$60,800
1993	01/01/1993	\$32,000		\$28,800	\$60,800
1992	01/01/1992	\$32,000		\$28,800	\$60,800

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Click Real\_Estate\_Comments to submit comments or corrections.

- K-2A, K-2AC
- R-6, R-6C
- RTH, RTHC
- C-1, C-1C
- UMU; UMUC



**Title:**

*DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and Henrico is not responsible for its accuracy or how current it may be.*

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Edward J. Taborek  
Appeal No. 15-3

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BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE:           Appeal of Edward J. Taborek  
                    Appeal No. 15-3

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1.           In November of 2014, the Fairfax County Department of Code Compliance (FCDCC), the County agency responsible for the enforcement of Part III of the Virginia Uniform Statewide Building Code (the Virginia Maintenance Code, or VMC), conducted an inspection of a single-family detached home at 6200 Wayles Street, in Springfield, owned by Edward J. Taborek (Taborek). The inspection resulted in the issuance of a notice of violation under the VMC to Taborek for the lack of maintenance of several areas on the inside and outside of the home, citing VMC Sections 304.10 (Stairways, Decks, Porches, Balconies), 304.2 (Protective Treatment) and 305.1 (Interior Structure General).

2.           Taborek filed an appeal of the notice to the Fairfax County Board of Building Code Appeals (County appeals board) which conducted a hearing in February of 2014. The County appeals board ruled to uphold the notice concerning VMC Sections 304.10 and 304.2, but overturned the notice on VMC Section 305.1.

3.           Taborek then further appealed the County appeals board's decision to uphold the notice regarding VMC Sections 304.2 and 304.10 on the lack of maintenance of the exterior stair landing at the front door of the home.

4. Subsequently, Taborek notified the Office of the Review Board that exterior painting required in the notice of violation (under VMC Section 304.2) had been completed and, as a result, the FCDCC withdrew that particular violation. Therefore, this appeal only applies to VMC Section 304.10 (Stairways, Decks, Porches, Balconies).

5. This staff document was drafted and distributed to the parties and timeframes were established for the submittal of objections; corrections or additions to the staff document; the submittal of additional documents for the record; and written arguments to be included in the record of the appeal prepared for the hearing before the Review Board.

Suggested Issue for Resolution by the Review Board

1. Whether to overturn the decision of the County appeals board and the issuance of the notice of violation by FCDCC concerning VMC Section 304.10 (Stairways, Decks, Porches, Balconies).

# COMBINED DOCUMENTS

COPY



# 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:** November 17, 2014

**METHOD OF SERVICE:** CERTIFIED MAIL # 7014 1200 0001 9011 3990

**LEGAL NOTICE ISSUED TO:** Edward J. Taborek  
**ADDRESS:** 6200 Wayles St  
Springfield, VA 22150

**LOCATION OF VIOLATION:** 6200 Wayles St  
Springfield, Virginia 22150-1225

**TAX MAP REF:** 0813 13G 0221

**CASE #:** 201407726 **SR #:** 111575

**ISSUING INVESTIGATOR:** F. Sidy Charley, (703)324-4262

### POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

CODE § 61-7-1(B):	Maintenance Code Violation(s)	First Offense	Each Subsequent Offense
	§304.10	\$ 100.00	\$ 150.00
	§304.2	\$ 100.00	\$ 150.00
	§305.1	\$ 100.00	\$ 150.00
<b>TOTAL:</b>		<b>\$ 300.00</b>	<b>\$ 450.00</b>

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code-2012 Edition), an inspection on November 12, 2014 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: STAIRWAYS, DECKS, PORCHES, BALCON VMC 304.10.** Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

**Location:** Stairway leading to the front door entrance.

222

**Work To Be Performed:** Repair the damaged area of the stairs to be structurally sound.

**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:** All exterior wood surfaces.

**Work To Be Performed:** Protect wood surfaces from elements and decay by painting or other protective covering or treatment.

**Violation: INTERIOR STRUCTURE GENERAL VMC 305.1.** The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

**Location:** Interior of the house.

**Work To Be Performed:** Clean and remove all debris in the interior of the house and maintain all interior surfaces in a sanitary condition.

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:

Edward J. Taborek  
November 17, 2014  
SR 111575  
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](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.

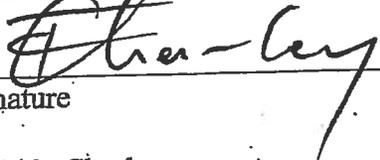
The Fairfax County Board of Building and Fire Prevention Code Appeals shall meet within 30 calendar days after the date of receipt of the application for appeal.

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)324-4262. For any other questions, contact our main office at (703)324-1300.

LEGAL NOTICE ISSUED BY:

  
\_\_\_\_\_  
Signature

F. Sidy Charley  
Code Compliance Investigator  
(703)324-4262  
Francis.Charley@fairfaxcounty.gov





# Building Code Appeal Request

Received  
141126-DAP  
NOV 26 2014

## PROJECT INFORMATION

Project Name: Notice of violation  
Project Address: 6200 Wayles St. Springfield VA 22150  
Permit or case number: 2014 07726 SR 111575 Tax map number: 0813 136 0221

Land Development  
Director's Office

## APPLICANT INFORMATION

Applicant Name: Edward J Taborek  Owner  Owner's agent  
Address: 6200 Wayles St.  
City: Springfield VA State: VA ZIP: 22150  
Phone: 703 971-9227 Email: taborekej@aol.com

## OWNER INFORMATION

See applicant information  
Owner Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_

## APPEAL INFORMATION

Appealing decision made on the date of by  Building Official  Fire Official  Property Maintenance Official  
rendered on the following date: Nov 17, 2014  
Code(s) (IBC, IMC, IPMC, etc.) and year-edition: VMC 304.10 VMC 305.1 VMC 304.2  
Section(s): \_\_\_\_\_

## REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:  
VMC 304.10 Violation is inaccurate  
VMC 304.2 " "  
VMC 305.4 " "  
Virginia Maintenance Code is illegal.

Received

NOV 26 2014

Land Development Services  
Directors Office

Please return the completed form and any supporting documentation to the address or email below.

Chairman, Fairfax County Board of Building Code Appeals -  
12055 Government Center Parkway, Suite 444 -  
Fairfax, VA 22035-5504 -  
Attention: Secretary to the Board -  
buildingofficial@fairfaxcounty.gov



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** December 17, 2014

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

**FROM:** Elizabeth Perry   
Virginia Maintenance Code Official  
Department of Code Compliance

F. Sidy Charley  
Code Investigator  
Department of Code Compliance

**SUBJECT:** January 14, 2015 Appeal Hearing

**REFERENCE:** Appeal of Edward J. Taborek  
6200 Wayles Street  
Springfield, VA 22150

**CODE:** 2012 Virginia Maintenance Code

Staff of the Department of Code Compliance (DCC) respectfully request that the Fairfax County Board of Building Code Appeals (Board) uphold the decision in the Notice of Violation dated November 17, 2014 that the referenced property is in violation of the Virginia Maintenance Code (VMC) Section 304.10, Stairways, decks, porches and balconies; Section 304.2, Protective treatment; and Section 305.1, Interior structure general.

### Background Information

The referenced property is developed with a one story single family detached dwelling. In response to a complaint, an inspection of the referenced property was conducted on November 12, 2014. During the inspection, while standing at the front door of the home and making contact with the homeowner, DCC Investigator F. Sidy Charley observed the following:

- Structural damage/deterioration of the exterior stairs leading up to the front door causing exposed rebar and crumbling concrete;
- Peeling paint on all exterior wood surfaces at the front of the house; and,
- Trash, debris, and other items located and stacked on the floor of the house, and which

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Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, VA 22035-5508  
Phone 703-324-1300 Fax 703-324-9346  
[www.fairfaxcounty.gov/code](http://www.fairfaxcounty.gov/code)

had accumulated at a volume that created unsanitary conditions, and prevented the property owner from being able to fully open the front door.

Photos of the violations observed on the exterior of the structure are attached. There are no photos of the interior conditions.

**Notice of Violation**

A Notice of Violation was issued on November 17, 2014 (attached) for the following violations of the VMC:

VMC 304.10	Stairways, Decks, Porches and Balconies
VMC 304.2	Protective Treatment
VMC 305.1	Interior Structure – General

**Appellant Position**

The Appellant's position is stated in the attached appeal application. In summary, the appellant contends that the violations are "inaccurate."

**County Position**

The County's position is that the investigator's inspection details are true and accurate, and establish that there are three VMC violations that need to be resolved. These violations were observed in plain view from the street and while standing on the front porch making initial contact with the homeowner.

**Recommendation**

The property owner should bring the property into compliance with the VMC, as directed in the Notice of Violation by:

- Repairing the damaged area of the stairs and returning them to a structurally sound state;
- Coating exterior wood surfaces to protect them from the elements and decay by painting or adding other protective covering or treatment;
- Cleaning and removing debris in the interior of the house in order to restore and maintain interior conditions that are sanitary, do not adversely affect health and safety, and remove the life safety hazard associated with blocking an egress door.

Based on the facts provided staff recommends the Board uphold the decision of the Department without deferrals, and allow staff to proceed with the appropriate enforcement and legal proceedings as authorized in the Uniform Statewide Building Code (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, 2012 edition, sections 304.10, 304.2, 305.1. 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. 141126.0AP

In RE: Edward J. Taborek

6200 Wayles Street

Springfield, VA 22150

v. Fairfax County Department of  
Code Compliance

In a vote of 5-0 with one abstention on the Board:

1. Denied the appeal for sections 304.10 and 304.2. Pictures presented by County Officials clearly showed the violations.
2. Granted the appeal for section 305.1. County Officials could not definitively describe the extent of the debris in the interior of the house.

**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:

2/18/2014

Signature:

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.

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

MAR 27 2015  
ALM

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

Edward J Taborek phone 703-971-9227  
6200 Wayles St, email: taborekej@aol.com  
Springfield, VA 22150

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

Fairfax County Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, VA 22035-5508 phone 703-324-1300  
email: buildingofficial@fairfaxcounty.gov

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 27 day of March, 2015, 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.

*Original Application was sent Certified Mail on March 17, 2015*

Signature of Applicant: Edward J Taborek

Name of Applicant: EDWARD J TABOREK  
(please print or type)

**SPECIFIC RELIEF REQUESTED**

Nullification of Fairfax County Notice of Violation of VMC 304.10 having to do with "Structural Damage/deterioration of the exterior stairs leading up the front door causing exposed rebar and crumbling concrete"

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

APPLICATION FOR 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):

Edward J. Taborek  
6200 Wayles St., Springfield, VA 22150  
Phone: 703-971-9227 email: taborekej@201.com

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

Fairfax County Department of Code Compliance  
12055 Government Center Parkway, Suite 1016  
Fairfax, VA 22035-5508 Phone: 703-324-1300 Fax: 703-324-9346  
email: Francis.Charley@fairfaxcounty.gov

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 (see over)

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 201\_, 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: Edward J. Taborek

Name of Applicant: EDWARD J. TABOREK  
(please print or type)

Specific relief sought:

Nullification of Notice of Violation issued November 17, 2014

for violation of the VMC:

VMC 304.10 Stairways, Decks, Porches and Balconies

VMC 304.2 Protective Treatment

Notice of denial of appeal of Fairfax County  
Board of Building Code Appeals was received  
on Feb. 26, 2015. Twenty-one days for  
appeal to State Building Code Technical Review  
Board expires March 18, 2015.

REQUEST FOR INTERPRETATION

TO: OFFICE OF THE STATE BUILDING CODE TECHNICAL REVIEW BOARD  
VIRGINIA DEPT. OF HOUSING AND COMMUNITY DEVELOPMENT  
Main Street Centre  
600 E. Main Street, Suite 300  
Richmond, Virginia 23219-1321  
Tel: (804) 371-7150 Fax: (804) 371-7092

FROM: Phillip Moore  
Building / Fire Official  
Town of Farmville, Va.

Phone: 434-392-8465

Code: ~~109.3~~ Va. Statewide Fire Code

Section(s): 109.3

Submitted by (signature): Phillip Moore Date: 5/15

QUESTION(S):

We have residential facilities that are operated by Longwood University and the question is who has jurisdiction?

Sub-section 3 of 109.3 lists residential facilities and sub-section 4 shall ~~be~~ inspected by the state fire official which are not inspected by a local fire marshal.

Does the and link sub-sections 3+4? or is it just grammatical notation? The and is at the end of sub-section III not @ the beginning of sub-section IV. It would seem consistent w/ Section 104 as regards to jurisdiction that they be linked. It would seem foolish & an unfair practice to have overlapping jurisdiction? or is it the State's jurisdiction or is it the locality? 234  
Thanks, Phillip Moore

and shall be readily available for inspection by the fire official.

**108.3.6 Compliance with code.** The issuance or granting of an operational permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Operational permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on other data shall not prevent the fire official from requiring the correction of errors in the provided documents and other data. Any addition to or alteration of approved provided documents shall be approved in advance by the fire official, as evidenced by the issuance of a new or amended permit.

**108.3.7 Information on the permit.** The fire official shall issue all operational permits required by this code on an approved form furnished for that purpose. The operational permit shall contain a general description of the operation or occupancy and its location and any other information required by the fire official. Issued permits shall bear the original or electronic signature of the fire official or other designee approved by the fire official.

**108.4 Revocation.** The fire official is authorized to revoke an operational permit issued under the provisions of this code when it is found by inspection or otherwise that there has been a false statement or misrepresentation as to the material facts in the application or documents on which the permit or approval was based including, but not limited to, any one of the following:

1. The permit is used for a location or establishment other than that for which it was issued.
2. The permit is used for a condition or activity other than that listed in the permit.
3. Conditions and limitations set forth in the permit have been violated.
4. Inclusion of any false statements or misrepresentations as to a material fact in the application for permit or plans submitted or a condition of the permit.
5. The permit is used by a different person or firm than the person or firm for which it was issued.
6. The permittee failed, refused or neglected to comply with orders or notices duly served in accordance with the provisions of this code within the time provided therein.

7. The permit was issued in error or in violation of an ordinance, regulation or this code.

## SECTION 109 INSPECTION

**109.1 Inspection.** The fire official may inspect all structures and premises for the purposes of ascertaining and causing to be corrected any conditions liable to cause fire, contribute to the spread of fire, interfere with firefighting operations, endanger life, or any violations of the provisions or intent of the SFPC.

**Exception:** Single family dwellings and dwelling units in two family and multiple family dwellings and farm structures shall be exempt from routine inspections. This exemption shall not preclude the fire official from conducting routine inspections in Group R-3 or Group R-5 occupancies operating as a commercial bed and breakfast as outlined in Section 310.3 of the USBC or inspecting under Section 27-98.2 of the Code of Virginia for hazardous conditions relating to explosives, flammable and combustible conditions, and hazardous materials.

**109.1.1 Right to entry.** The fire official may enter any structure or premises at any reasonable time to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the fire official may pursue recourse as provided by law.

**Note:** Specific authorization and procedures for inspections and issuing warrants are set out in Sections 27-98.1 through 27-98.5 of the Code of Virginia and shall be taken into consideration.

**109.1.2 Credentials.** The fire official and technical assistants shall carry proper credentials of office when inspecting in the performance of their duties under the SFPC.

**109.2 Coordinated inspections.** The fire official shall coordinate inspections and administrative orders with any other state and local agencies having related inspection authority, and shall coordinate those inspections required by the USBC for new construction when involving provisions of the amended IFC, so that the owners and occupants will not be subjected to numerous inspections or conflicting orders.

**Note:** The USBC requires the building official to coordinate such inspections with the fire official.

**109.3 Other inspections.** In accordance with Section 9.1-207 of the Code of Virginia, the State Fire Marshal, upon presenting proper credentials, shall make annual inspections for hazards incident to fire in all (i) residential care

## ADMINISTRATION

facilities operated by any state agency, (ii) assisted living facilities licensed or subject to licensure pursuant to Chapter 18 (Section 63.2-1800 et seq.) of Title 63.2 of the Code of Virginia which are not inspected by a local fire marshal, (iii) student-residence facilities owned or operated by the public institutions of higher education in the Commonwealth, and (iv) public schools in the Commonwealth which are not inspected by a local fire marshal. In the event that any such facility or residence is found to be nonconforming to the SFPC, the State Fire Marshal or local fire marshal may petition any court of competent jurisdiction for the issuance of an injunction.

### SECTION 110 UNSAFE CONDITIONS

**110.1 General.** The fire official shall order the following dangerous or hazardous conditions or materials to be removed or remedied in accordance with the SFPC:

1. Dangerous conditions which are liable to cause or contribute to the spread of fire in or on said premises, building or structure, or to endanger the occupants thereof.
2. Conditions which would interfere with the efficiency and use of any fire protection equipment.
3. Obstructions to or on fire escapes, stairs, passageways, doors or windows, which are liable to interfere with the egress of occupants or the operation of the fire department in case of fire.
4. Accumulations of dust or waste material in air conditioning or ventilating systems or grease in kitchen or other exhaust ducts.
5. Accumulations of grease on kitchen cooking equipment, or oil, grease or dirt upon, under or around any mechanical equipment.
6. Accumulations of rubbish, waste, paper, boxes, shavings, or other combustible materials, or excessive storage of any combustible material.
7. Hazardous conditions arising from defective or improperly used or installed electrical wiring, equipment or appliances.
8. Hazardous conditions arising from defective or improperly used or installed equipment for handling or using combustible, explosive or otherwise hazardous materials.
9. Dangerous or unlawful amounts of combustible, explosive or otherwise hazardous materials.

10. All equipment, materials, processes or operations which are in violation of the provisions and intent of this code.

**110.2 Maintenance.** The owner shall be responsible for the safe and proper maintenance of any structure, premises or lot. In all structures, the fire protection equipment, means of egress, alarms, devices and safeguards shall be maintained in a safe and proper operating condition as required by the SFPC and applicable referenced standards.

**110.3 Occupant responsibility.** If a building occupant creates conditions in violation of this code, by virtue of storage, handling and use of substances, materials, devices and appliances, such occupant shall be held responsible for the abatement of said hazardous conditions.

**110.4 Unsafe structures.** All structures that are or shall hereafter become unsafe or deficient in adequate exit facilities or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or by reason of illegal or improper use, occupancy or maintenance or which have sustained structural damage by reason of fire, explosion, or natural disaster shall be deemed unsafe structures. A vacant structure, or portion of a structure, unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this code. Unsafe structures shall be reported to the building official or building maintenance official who shall take appropriate action under the provisions of the USBC to secure abatement. Subsequently, the fire official may request the legal counsel of the local governing body to institute the appropriate proceedings for an injunction against the continued use and occupancy of the structure until such time as conditions have been remedied.

**110.5 Evacuation.** When, in the fire official's opinion, there is actual and potential danger to the occupants or those in the proximity of any structure or premises because of unsafe structural conditions, or inadequacy of any means of egress, the presence of explosives, explosive fumes or vapors, or the presence of toxic fumes, gases or materials, the fire official may order the immediate evacuation of the structure or premises. All notified occupants shall immediately leave the structure or premises and no person shall enter until authorized by the fire official.

**110.6 Unlawful continuance.** Any person who refuses to leave, interferes with the evacuation of other occupants or continues any operation after having been given an evacuation order shall be in violation of this code.

**Exception:** Any person performing work directed by the fire official to be performed to remove an alleged violation or unsafe condition.

## **§ 9.1-207. Inspection of certain state-owned, state-operated, or state-licensed facilities; enforcement of safety standards**

Notwithstanding any other provisions of this chapter, the State Fire Marshal, upon presenting appropriate credentials, shall make annual inspections for hazards incident to fire in all (i) residential care facilities operated by any state agency, (ii) assisted living facilities licensed or subject to licensure pursuant to Chapter 18 (§ 63.2-1800 et seq.) of Title 63.2 that are not inspected by the local fire marshal, (iii) student residence facilities owned or operated by a public institution of higher education, and (iv) public schools that are not inspected by the local fire marshal. In the event that any such facility or residence is found to be nonconforming to the Statewide Fire Prevention Code, the State Fire Marshal or local fire marshal may petition any court of competent jurisdiction for the issuance of an injunction.

2007, cc. 647, 741.

**REQUEST FOR INTERPRETATION**

TO: OFFICE OF THE STATE BUILDING CODE TECHNICAL REVIEW BOARD  
VIRGINIA DEPT. OF HOUSING AND COMMUNITY DEVELOPMENT  
Main Street Centre  
600 E. Main Street, Suite 300  
Richmond, Virginia 23219-1321  
Tel: (804) 371-7150 Fax: (804) 371-7092

FROM: City of Lynchburg, Virginia  
Doug Saunders, Building Official  
Community Development / Inspection Division  
900 Church Street  
Lynchburg, VA. 24504

Phone: 434-455-3910

Code: 2009 Uniform Statewide Building Code - Virginia Construction Code

Section(s): 103.5 - Reconstruction, alteration or repair.

Submitted by (signature):  Date: June 3, 2015  
CITY OF LYNCHBURG - BUILDING OFFICIAL

**QUESTION(S):**

Would adding a non permeable barrier (shellac) to the interior side of the wall cavity to cover the smoke odor constitute an alteration to the existing wall and would it adversely effect the performance of the wall assembly as referenced in sub-section 1?

Please see attachment for factual background of existing structure.



*Inspections Division • Community Development*

900 Church Street • Lynchburg • Virginia • 24504

[www.lyncburgva.gov](http://www.lyncburgva.gov) • P 434-455-3910 • F 434-845-7630

REQUEST FOR TECHNICAL INTERPRETION FROM  
THE STATE BUILDING CODE TECHNICAL REVIEW BOARD  
FROM THE CITY OF LYNCHBURG INSPECTIONS OFFICE

FACTUAL BACKGROUND

On July 31, 2013 a Lynchburg homeowner suffered a substantial fire loss to his residence which will require substantial repair. The home was initially constructed in 1972.

One end of the structure was consumed by the fire, and will require rebuilding and restoration pursuant to the "new construction" requirements of the IRC, including removal of the brick façade and the installation of a vapor barrier pursuant to 703.1.1 of the IRC. The homeowner wished to gut the remainder of the house due to smoke and water damage sustained in the fire suppression efforts. In an effort to keep the smoke smell out of the framing and exterior walls from permeating the living space, it is being contemplated that a sealant (shellac) be applied to the interior studs and wall surfaces. Because the house was constructed without a vapor barrier on the exterior of the framing, the installation of the sealant (shellac) on the interior walls may constitute a repair that adversely affects the performance of the building structure, or may lower the existing levels of safety of the house by trapping moisture in the wall structure, pursuant to USBC 103.5.