

Virginia:

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

IN RE: Appeal of Lien Tran and Anh Nguyen  
Appeal No. 15-21

Hearing Date: July 15, 2016

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

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

II. CASE HISTORY

In May of 2015, in response to a complaint, 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 2012 Virginia Maintenance Code, or VMC), conducted an inspection of a detached single-family dwelling at 7101 Carol Lane, in Falls Church, owned by Lien Tran and Anh Nguyen (hereafter referred to as "Tran").

As a result of the inspection, the FCDCC issued a Notice of Violation to Tran, in May of 2015, for the lack of maintenance of the dwelling, citing VMC Sections 304.13 (Window, skylight and door frames), 304.2 (Protective treatment), and 304.7 (Roofs and drainage).

Consequently, Tran filed an appeal of the notice to the Fairfax County Board of Building Code Appeals (County appeals board) which heard the appeal in December of 2015 and ruled to deny the appeal, thus upholding the decision of the FCDCC.

Tran further appealed to the Review Board.

Following the distribution of a Review Board staff document to the parties, the FCDCC issued a new Notice of Violation to Tran rescinding its May 29, 2015 notice, the document upon which the appeal is based. The FCDCC provided a copy of the new notice to the Office of the Review Board for inclusion in the July 15, 2016 agenda package. Staff advised the parties of the Review Board's policy of ruling an appeal moot when the application of the code, upon which the appeal is based, has been vacated or removed.

Subsequently, a hearing on the appeal was heard before the Review Board with Tran (both Lien Tran and Anh Nguyen) present; representatives of the FCDCC were not present.

### III. FINDINGS OF THE REVIEW BOARD

The Review board has consistently ruled that where differing or multiple applications of the code concerning the same subject matter have been made by a code official, the latest or most current application of the USBC relative to or involving the same situation may be appealed under the USBC<sup>1</sup>. Similarly in this appeal, the Review Board finds that the May 27, 2016 Notice of Violation is the most current application of the code because it supersedes the rescinded May 29, 2015 notice of violation issued against Tran.

Moreover, the Review Board finds that because the May 29, 2015 Notice of Violation was rescinded, there is no application of the code upon which to base a decision, therefore rendering the appeal moot. For these reasons, the Review Board finds the appeal moot.

### IV. FINAL ORDER

The appeal hearing havin been given due regard, and for the

<sup>1</sup> See Review Board Appeal Nos. 98-8, 99-1 and 00-2

reasons set out herein, the Review Board orders Tran's appeal to be, and hereby is, dismissed as moot.

/s/\*

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Chairman, State Technical Review Board

September 16, 2016

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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.

\*Note: The original signed final order is available from Review Board staff.