

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, October 18, 2024 - 10:00am

Virginia Housing Center  
4224 Cox Road Glen Allen, Virginia 23260

- I. Roll Call **(TAB 1)**
- II. Approval of September 20, 2024 Minutes **(TAB 2)**
- III. Approval of Final Order **(TAB 3)**
  - In Re: Hotel Street LLC  
Appeal No. 24-06
- IV. Approval of Final Order **(TAB 4)**
  - In Re: Brittion Hall LLC  
Appeal No. 24-07
- V. Public Comment
- VI. Request for Reconsideration **(Addendum)**
  - In R: A10 Capital, LLC  
Appeal No. 24-05
- VII. Appeal Hearing **(TAB 5)**
  - In Re: Susan Frazier  
Appeal No. 24-02
- VIII. Secretary's Report
  - a. November 2024 meeting update
  - b. Legal updates from Board Counsel

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STATE BUILDING CODE TECHNICAL REVIEW BOARD

**James R. Dawson, Chair**

(Virginia Fire Chiefs Association)

**W. Shaun Pharr, Esq., Vice-Chair**

(The Apartment and Office Building Association of Metropolitan Washington)

**Vince Butler**

(Virginia Home Builders Association)

**J. Daniel Crigler**

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

**Alan D. Givens**

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

**David V. Hutchins**

(Electrical Contractor)

**Christina Jackson**

(Commonwealth at large)

**Joseph A. Kessler, III**

(Associated General Contractors)

**R. Jonah Margarella, AIA, NCARB, LEED AP**

(American Institute of Architects Virginia)

**Eric Mays**

(Virginia Building and Code Officials Association)

**Joanne D. Monday**

(Virginia Building Owners and Managers Association)

**James S. Moss**

(Virginia Building and Code Officials Association)

**Elizabeth C. White**

(Commonwealth at large)

**Aaron Zdinak, PE**

(Virginia Society of Professional Engineers)

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1                                   **STATE BUILDING CODE TECHNICAL REVIEW BOARD**  
2                                   **MEETING MINUTES**  
3                                   **September 20, 2024**  
4                                   **Virginia Housing Center**  
5                                   **4224 Cox Road Glen Allen, Virginia 23060**  
6

Members Present

Mr. James R. Dawson, Chairman  
Mr. Daniel Crigler  
Mr. Alan D. Givens  
Mr. David V. Hutchins  
Ms. Christina Jackson  
Mr. R. Jonah Margarella  
Mr. Eric Mays, PE  
Mr. W. Shaun Pharr, Esq., Vice-Chairman  
Ms. Elizabeth White  
Mr. Aaron Zdinak, PE

Members Absent

Mr. Vince Butler  
Mr. Joseph Kessler  
Ms. Joanne Monday  
Mr. James S. Moss

7  
8 Call to Order

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

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10  
11  
12 Roll Call

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

13  
14  
15  
16 Approval of Minutes

The draft minutes of the August 16, 2024 meeting in the Review Board members’ agenda package were considered. Mr. Mays moved to approve the minutes as presented. The motion was seconded by Ms. White and passed with Mr. Margarella and Ms. Jackson abstaining.

17  
18  
19  
20  
21 Final Order

A10 Capital LLC: Appeal No. 24-05:

22  
23 After review and consideration of the final order presented in the Review Board members’ agenda package, Mr. Mays moved to approve the final order with two editorial corrections as follows:

- 24  
25  
26  
27                                   • On page 25 of the agenda package, line 155 of the final order, replace the word *raise* with *raze*  
28                                   • On page 29 of the agenda package, line 202 of the final order add the letter “s” to the end of the word *month*  
29  
30

31  
32 The motion was seconded by Mr. Hutchins and passed with Ms. Jackson abstaining.  
33  
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**State Building Code Technical Review Board**  
**September 20, 2024 Minutes - Page 2**

35 Public Comment Chair Dawson opened the meeting for public comment. Mr. Luter  
36 advised that no one had signed up to speak. With no one coming  
37 forward, Chair Dawson closed the public comment period.  
38

39 New Business Hotel Street LLC: Appeal No. 24-06:

40  
41 A preliminary hearing convened with Chair Dawson serving as the  
42 presiding officer. The hearing was related to the property located at 3  
43 Hotel Street, in town of Warrenton.  
44

45 The following persons were sworn in and given an opportunity to  
46 present testimony:  
47

48 Keith Macdonald, Owner  
49 Hunter Digges, Town of Warrenton Building Official  
50 Robert Walton, Town of Warrenton Director of Community  
51 Development

52 Also present was:  
53 M. Tolley Gwinn, Attorney for the Town of Warrenton  
54

55 After testimony concluded, Chair Dawson closed the preliminary  
56 hearing and stated a decision from the Review Board members would  
57 be forthcoming and the deliberations would be conducted in open  
58 session. It was further noted that a final order reflecting the decision  
59 would be considered at a subsequent meeting and, when approved,  
60 would be distributed to the parties, and would contain a statement of  
61 further right of appeal.  
62

63 Decision: Hotel Street LLC: Appeal No. 24-06:

64  
65 After deliberations, Mr. Mays moved that the appeal was untimely  
66 based on the following facts provided in the record of the appeal by Mr.  
67 Macdonald:  
68

- 69 • Town of Warrenton sent the written decision of the LBBCA  
70 certified mail on April 2, 2024
- 71 • Mr. Macdonald had knowledge and receipt of the decision of  
72 the LBBCA on April 30, 2024
- 73 • Mr. Macdonald certified his application for appeal to the  
74 Review Board on May 29, 2024  
75

76 The motion was seconded by Ms. Jackson and passed unanimously.  
77

78 Brittton Hall LLC: Appeal No. 24-07:  
79

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80 A preliminary hearing convened with Chair Dawson serving as the  
81 presiding officer. The hearing was related to the property located at 45  
82 Winchester Street, in Town of Warrenton.

83  
84 The following persons were sworn in and given an opportunity to  
85 present testimony:

- 86  
87 Keith Macdonald, Owner  
88 Hunter Digges, Town of Warrenton Building Official  
89 Robert Walton, Town of Warrenton Director of Community  
90 Development

91 Also present was:  
92 M. Tolley Gwinn, Attorney for the Town of Warrenton

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

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102 Decision: Brittion Hall LLC: Appeal No. 24-07:

103  
104 After deliberations, Mr. Mays moved that the appeal was untimely  
105 based on the following facts provided in the record of the appeal by Mr.  
106 Macdonald:

- 107  
108
  - Town of Warrenton sent the written decision of the LBBCA  
109 certified mail on April 2, 2024
  - Mr. Macdonald had knowledge and receipt of the decision of  
110 the LBBCA on April 30, 2024
  - Mr. Macdonald certified his application for appeal to the  
111 Review Board on May 29, 2024

112  
113  
114  
115 The motion was seconded by Ms. Jackson and passed unanimously.

116  
117 Secretary's Report Mr. Luter informed the Board that the Decision on Petition for  
118 Reconsideration for George and Carrie Schiano has been distributed  
119 September 5, 2024.

120  
121 Mr. Luter informed the Review Board of the current caseload for the  
122 upcoming meeting scheduled for October 18, 2024.

123  
124 Mr. Bell provided legal updates to the Review Board members.

125

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**State Building Code Technical Review Board**  
**September 20, 2024 Minutes - Page 4**

126 Adjournment                                     There being no further business, the meeting was adjourned by proper  
127 motion at approximately 12:00 p.m.  
128

129

130 Approved: October 18, 2024

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134 \_\_\_\_\_  
Chair, State Building Code Technical Review Board

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Secretary, State Building Code Technical Review Board

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1 VIRGINIA:  
2

3 BEFORE THE  
4 STATE BUILDING CODE TECHNICAL REVIEW BOARD  
5 **[Preliminary Hearing for Timeliness]**  
6

7  
8 IN RE: Appeal of Hotel Street LLC  
9 Appeal No. 24-06  
10

11 DECISION OF THE REVIEW BOARD  
12

13 I. Procedural Background  
14

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

20 II. Case History

21 On June 24, 2021, December 8, 2023, and March 6, 2024 the Town of Warrenton  
22 Department of Community Development (Town), the agency responsible for the enforcement of  
23 Part III of the 2015 and 2018 Virginia Uniform Statewide Building Code (VUSBC or VMC),  
24 issued Notices of Violation (NOV) to Michael K. and Etsudo K. Macdonald (Macdonald), for the  
25 structure located at 3 Hotel Street in the Town of Warrenton, citing the following VMC Sections  
26 on the specified dates of the NOVs:

- 27
- 103.1 *General* (June 24, 2021; December 8, 2023)
  - 28 ● 103.2 *Maintenance requirements* (June 24, 2021; December 8, 2023)
  - 29 ● 106.1 *Unsafe Structure or Structures Unfit for Human Occupancy* (June 24,  
30 2021; December 8, 2023)
  - 31 ● 302.3 *Sidewalks and driveways* (June 24, 2021; December 8, 2023; March 6,  
32 2024)
  - 33 ● 304.1 *General* (June 24, 2021; December 8, 2023; March 6, 2024)

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- 34 ● 304.2 *Protective treatment* (June 24, 2021; December 8, 2023; March 6, 2024)
- 35 ● 304.4 *Structural members* (June 24, 2021; March 6, 2024)
- 36 ● 304.6 *Exterior walls* (June 24, 2021; December 8, 2023; March 6, 2024)
- 37 ● 304.7 *Roofs and drainage* (June 24, 2021; December 8, 2023; March 6, 2024)
- 38 ● 304.8 *Decorative features* (June 24, 2021; December 8, 2023; March 6, 2024)
- 39 ● 304.9 *Overhang extensions* (June 24, 2021; March 6, 2024)
- 40 ● 304.13 *Window, skylight, and door frames* (June 24, 2021; December 8, 2023;
- 41 March 6, 2024)
- 42 ● 304.13.1 *Glazing* (June 24, 2021; December 8, 2023; March 6, 2024)
- 43 ● 304.13.2 *Openable windows* (June 24, 2021; December 8, 2023; March 6, 2024)
- 44 ● 304.15 *Doors* (June 24, 2021; December 8, 2023; March 6, 2024)
- 45 ● 305.1 *General* (June 24, 2021)
- 46 ● 305.2 *Structural members* (June 24, 2021)
- 47 ● 305.3 *Interior surfaces* (June 24, 2021)
- 48 ● 305.6 *Interior doors* (June 24, 2021)
- 49 ● 605.1. *Electrical components* (December 8, 2023; March 6, 2024)

51 Macdonald filed an appeal to the Town of Warrenton Board of Building Code Appeals  
 52 (local appeals board) on December 8, 2023 to the NOV issued December 8, 2023. On March 27,  
 53 2024, the local appeals board “upheld the decision of the official”. Macdonald further appealed to  
 54 the Review Board on May 30, 2024. The statement of relief sought, submitted by Macdonald to  
 55 Review Board staff, raised the question of whether, even if timely, the Board could take any action  
 56 on the relief sought by Macdonald; therefore, Review Board staff scheduled a preliminary hearing  
 57 for the Review Board to determine timeliness and properness before the Board. On the same day  
 58 the Review Board also heard Appeal 24-07 though similar was a distinct appeal from the case  
 59 (attached for reference).

60 Appearing at the Review Board meeting for Macdonald was Keith Macdonald. Appearing  
 61 at the Review Board meeting for the Town were Attorney M. Tolley Gwinn, Town Building  
 62 Official Hunter Digges, and Director of Community Development Robert Walton.

63 III. Findings of the Review Board

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64 A. Whether the appeal was untimely.

65 Macdonald argued that the Town issued the first NOV in November of 2023. Macdonald  
66 also argued that the Town did not hold a local appeals board meeting in November, December,  
67 January, or February. Macdonald argued that he had a headache and did not want to attend the  
68 local appeals board meeting on March 27, 2024, which he conveyed to the Town on the day of  
69 the meeting. Macdonald further argued that the Town proceeded to hold the meeting as  
70 scheduled in his absence. Macdonald also argued that the Town attempted to serve<sup>1</sup> him and that  
71 he was out of the country for three months and was never served. Macdonald argued that he  
72 never received a copy of the local appeals board decision; however, his wife did and emailed a  
73 copy to him. Macdonald further argued that the Town did not send notice to his attorney.  
74 Macdonald argued that his building floods. Macdonald also argued that the previous building  
75 official deemed the building safe and habitable.

76 Macdonald argued that the Town obstructed his ability to develop a building for eight  
77 years causing him to lose \$1.5 million, took two and a half years to issue a useless permit,  
78 interfered in legal contracts on other properties, made up things to obstructed his way of making  
79 a living such as permits required for work being performed and noncompliance of a set of stairs,  
80 which had been installed 15 years ago by a prior owner, uses the building department as a  
81 political instrument, and should respect what he does for the Town, instead they use their power  
82 to obstruct, discriminate, and cause harm. Macdonald also argued that based on a study he  
83 conducted in 2000, the Town had the lowest rents in the area and that is still the case in 2024.  
84 Macdonald argued that the Town is 80% vacant.

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<sup>1</sup> Macdonald offered no specifics or clarification as to what the Town attempted to serve.

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85 The Town argued that in accordance with VUSBC Section 107.7 an appeal to the Review  
86 Board must be filed within 21 calendar days of receipt of the decision of the local appeals board.  
87 The Town argued that the decision was sent by certified mail on April 2, 2024 and Macdonald  
88 had knowledge and receipt of the decision by April 30, 2024. The Town further argued that  
89 Macdonald’s appeals application to the Review Board was certified on May 29, 2024; therefore,  
90 Macdonald’s appeal was not timely filed and should be dismissed.

91 Macdonald directed most of his arguments towards concerns unrelated to the issue of  
92 timeliness. The Review Board heard those arguments from Macdonald but decided they neither  
93 needed to entertain those arguments nor rule on them and that the case should be about the  
94 timeliness of the appeal.

95 The Review Board found that Macdonald’s appeal was untimely based on the facts  
96 provided in the record that the Town sent the written decision of the local appeals board certified  
97 mail on April 2, 2024, Macdonald had knowledge and receipt of the local appeals board decision  
98 on April 30, 2024, and certified his appeals application to the Review Board on May 29, 2024  
99 which is outside the 21 day window required in VUSBC 107.7 and 107.8.

100 IV. Conclusion

101 The appeal having been given due regard, and for the reasons set out herein, the Review  
102 Board orders as follows:

103 A. Whether the appeal was untimely.

104 The appeal is dismissed as untimely based on the facts provided in the record that the Town  
105 sent the written decision of the local appeals board was sent certified mail on April 2, 2024,  
106 Macdonald had knowledge and receipt of the local appeals board decision on April 30, 2024, and  
107 certified his appeals application to the Review Board on May 29, 2024 which is outside the 21 day  
108 window required in VUSBC 107.7 and 107.8.

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Chair, State Building Code Technical Review Board

Date entered \_\_\_\_\_October 18, 2024\_\_\_\_\_

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

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1 VIRGINIA:  
2

3 BEFORE THE  
4 STATE BUILDING CODE TECHNICAL REVIEW BOARD  
5 **[Preliminary Hearing for Timeliness]**  
6

7  
8 IN RE: Appeal of Brittion Hall LLC  
9 Appeal No. 24-07  
10

11 DECISION OF THE REVIEW BOARD  
12

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

20 II. Case History

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22 Community Development (Town), the agency responsible for the enforcement of Part III of the  
23 2018 Virginia Uniform Statewide Building Code (VUSBC or VMC), issued Notices of Violation  
24 (NOV) to Michael K. and Etsudo K. Macdonald (Macdonald), for the structure located at 45  
25 Winchester Street in the Town of Warrenton, citing the following VMC Sections on the specified  
26 dates of the NOVs:

- 27 • 103.1 General (November 13, 2023)
- 28 • 103.2 Maintenance requirements (November 13, 2023; March 7, 2024)
- 29 • 106.1 Unsafe Structure or Structures Unfit for Human Occupancy (November  
30 13, 2023)
- 31 • 302.3 Sidewalks and driveways (November 13, 2023)
- 32 • 304.1 General (November 13, 2023; March 7, 2024)
- 33 • 304.2 Protective treatment (November 13, 2023; March 7, 2024)
- 34 • 304.4 Structural members (November 13, 2023; March 7, 2024)

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- 35 • 304.6 Exterior walls (November 13, 2023; March 7, 2024)
- 36 • 304.7 Roofs and drainage (November 13, 2023; March 7, 2024)
- 37 • 304.8 Decorative features (November 13, 2023; March 7, 2024)
- 38 • 304.9 Overhang extensions (November 13, 2023; March 7, 2024)
- 39 • 304.13 Window, skylight, and door frames (November 13, 2023; March 7,
- 40 2024)
- 41 • 304.13.1 Glazing (November 13, 2023; March 7, 2024)
- 42 • 304.13.2 Openable windows (November 13, 2023; March 7, 2024)
- 43 • 304.15 Doors (November 13, 2023; March 7, 2024)
- 44 • 305.4 Stairs and walking surfaces (March 7, 2024)
- 45

46 Macdonald filed an appeal to the Town of Warrenton Board of Building Code Appeals  
47 (local appeals board). On March 27, 2024, the local appeals board “upheld the decision of the  
48 official”. Macdonald further appealed to the Review Board on May 30, 2024. Macdonald did not  
49 submit a statement of relief sought with his appeals application to the Review Board. Review  
50 Board staff notified Macdonald both via telephone conversation on June 4, 2024 and email on June  
51 17, 2024 that a statement of relief sought was needed to complete his appeals application to the  
52 Review Board. Review Board staff additionally advised Macdonald that without a statement of  
53 relief sought the Review Board would likely not be able to grant relief as the Review Board would  
54 not know what relief Macdonald sought. Staff further advised Macdonald that if the statement of  
55 relief sought was not submitted by the June 19, 2024 deadline, staff would proceed with processing  
56 the appeal with the information provided. No statement of relief sought was ever submitted by  
57 Macdonald.

58 Appearing at the Review Board meeting for Macdonald was Keith Macdonald. Appearing  
59 at the Review Board meeting for the Town were Attorney M. Tolley Gwinn, Town Building  
60 Official Hunter Digges, and Director of Community Development Robert Walton.

61 III. Findings of the Review Board

62 A. Whether the appeal was untimely.

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63 Macdonald argued that his Brittion Hall LLC appeal was identical to his Hotel Street  
64 LLC<sup>1</sup> (attached for reference) with the only difference being the property address. Macdonald  
65 argued that the Town did not submit the signed receipt for the certified mailing for the record of  
66 the appeal. Macdonald further argued that his wife signed the certified mail receipt. Macdonald  
67 argued that he knew what the local appeals board decision was the day after the meeting.  
68 Macdonald argued that the Town was required to serve him<sup>2</sup>. Macdonald also argued that the  
69 previous building official deemed the building safe and habitable. Macdonald appeared to  
70 concede that the appeal was indeed untimely.

71 Macdonald argued that the Town obstructed his ability to develop the building.  
72 Macdonald argued that the Town re-wrote the town code expressly to come after him.  
73 Macdonald further argued that the Town illegally changed the zoning for his property.  
74 Macdonald also argued that the Town was corrupt, ill managed, and highly political. Macdonald  
75 further argued that the Town obstructs, discriminates, and harasses its citizens. Macdonald also  
76 argued that the Town Mayor interfered in a legal contract to sell one of his properties for \$1.2  
77 million in 2000. Macdonald argued that the upcoming town election would likely result in the  
78 sitting town officials being replaced.

79 Macdonald argued that there were defects in his building; however, the defects had  
80 existed 30 to 50 years. Macdonald further argued that the middle wall had sunken into the  
81 basement due to termite damage and structurally failed in five other places. Macdonald argued  
82 that when he purchased the building it was occupied by seven families in five apartments.  
83 Macdonald further argued that basement would flood and was a “crack den”. Macdonald further

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<sup>1</sup> Hotel Street LLC (Appeal No. 24-06)

<sup>2</sup> Macdonald offered no specifics or clarification as to what he thought the Town was required to serve.

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84 argued that two tenants were hoarders, and you could not walk down the hallways of the  
85 building. Lastly, Macdonald argued that there were more squirrels in the building than people.

86 The Town argued that in accordance with VUSBC Section 107.7 an appeal to the Review  
87 Board must be filed within 21 calendar days of receipt of the decision of the local appeals board.  
88 The Town argued that the decision was sent by certified mail on April 2, 2024 and Macdonald  
89 had knowledge and receipt of the decision by April 30, 2024. The Town further argued that  
90 Macdonald's appeals application to the Review Board was certified on May 29, 2024; therefore,  
91 Macdonald's appeal was not timely filed and should be dismissed. Lastly, the Town argued that  
92 often individuals that are sent a certified mail refuse to sign for it. The Town further argued that  
93 enforceability of the building code cannot be avoided by never signing for a certified mailing.

94 Macdonald directed some of his arguments towards concerns unrelated to the issue of  
95 timeliness. The Review Board heard those arguments from Macdonald but decided they neither  
96 needed to entertain those arguments nor rule on them and that the case should be about the  
97 timeliness of the appeal.

98 The Review Board found that Macdonald's appeal was untimely based on the facts  
99 provided in the record that the Town sent the written decision of the local appeals board certified  
100 mail on April 2, 2024, Macdonald had knowledge and receipt of the local appeals board decision  
101 on April 30, 2024, and certified his appeals application to the Review Board on May 29, 2024  
102 which is outside the 21 day window required in VUSBC 107.7 and 107.8.

103 IV. Conclusion

104 The appeal having been given due regard, and for the reasons set out herein, the Review  
105 Board orders as follows:

106 A. Whether the appeal was untimely.

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107           The appeal is dismissed as untimely based on the facts provided in the record that the Town  
108 sent the written decision of the local appeals board was sent certified mail on April 2, 2024,  
109 Macdonald had knowledge and receipt of the local appeals board decision on April 30, 2024, and  
110 certified his appeals application to the Review Board on May 29, 2024 which is outside the 21 day  
111 window required in VUSBC 107.7 and 107.8.

112

113

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Chair, State Building Code Technical Review Board

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116

117

Date entered \_\_\_\_\_ October 18, 2024 \_\_\_\_\_

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121

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

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Susan Frazier  
Appeal No. 24-02

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VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD  
**(Preliminary Hearing for Completeness of the Application and Timeliness)**

IN RE:           Appeal of Susan Frazier  
                    Appeal No. 24-02

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1.       On Friday March 8, 2024 at 3:28 p.m., Susan Frazier (Frazier) attempted to send an email to Review Board staff (staff) while copying the State Building Codes Office (SBCO) general email inbox, which is the email address found on the application for appeal to the State Building Code Technical Review Boards (Review Board). In Frazier’s email she misspelled the name of staff; therefore, the email was only delivered to the SBCO general inbox.

2.       The SBCO team member charged with monitoring the SBCO general inbox forwarded Frazier’s email to staff on Friday March 8, 2024 at 5:00 p.m. Frazier’s email provided notice that she intended to appeal a decision of the Fairfax County Board of Building Code Appeals (local appeals board) dated February 20, 2024. No application or supporting documents were attached to the email.

3.       Review Board staff responded to Frazier on Monday March 11, 2024 at 7:54 a.m. and informed Frazier she could submit her application directly to staff at the email address from which she was receiving the message.

4.       Frazier’s initial appeals application to the Review Board was emailed Monday March 11, 2024 at 7:41 p.m., local appeals board resolution emailed at 7:54 p.m., and statement of relief sought emailed at 11:23 p.m. Staff acknowledged receipt of the appeals application, local

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appeals board resolution, and statement of relief sought on Tuesday March 12, 2024 at 9:38 a.m., 9:43 a.m., and 9:51 a.m. respectively.

5. On Tuesday March 12, 2024 at 10:51 a.m., staff emailed Frazier and outlined the documentation and/or information needed to be submitted for staff to begin processing her appeal.

The email provided in part the following guidance for submittal:

- a) *“A complete application was not submitted.*
  - o *Only one part of the Uniform Statewide Building Code may be selected on the application. Based on the resolution it appears the cited code was the Virginia Maintenance Code. Verify this to be true and update the application accordingly.*
  - o *The Opposing Party Information was not provided. Provide the name, telephone number, and email address of the Fairfax County Property Maintenance Official.*
- b) *A copy of the enforcement decision being appealed was not submitted. Submit a copy of the enforcement decision being appealed.*
- c) *The statement of relief sought submitted does not request relief the Review Board can provide. The statement of relief sought should outline what relief the appellant seeks from the Review Board related to the cited code violations. In other words, what are you asking the Review Board to do related to the cited code violations. This would be what you believe Fairfax County wrongfully cited in its enforcement decision. Asking the Review Board to have the “complainant to stop making false accusations and habitual complaint about my home” is outside the scope of the authority of the Review Board and not related to the cited code violations ... “*

*“Please be informed that your application is not considered as “filed” until this minimally required documentation is submitted.”*

6. On Wednesday March 13, 2024 at 3:59 p.m., Frazier responded acknowledging receipt of staff’s email dated March 12, 2024 at 10:51 a.m. In her email Frazier indicated she would call staff the following day. Staff informed Frazier that they were not available for a call the following day (staff was providing appeals training in Harrisonburg) and to submit the requisite documentation and information and staff would call her once the information has been received and reviewed.

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7. On March 20, 2024 at 10:34 a.m., staff followed up with Frazier because the requisite documentation and/or information had not been submitted. Frazier responded the same day at 12:05 p.m., indicating she was working on the revisions. Staff acknowledged her email and advised that she not delay her submittal as it needed to be done within a specified timeframe. Staff specified in detail the timeframe and deadline for submittal based on the information Frazier has provided at that time.

8. On April 29, 2024 at 1:22 p.m., staff followed up again with Frazier because the requisite documentation and/or information still had not submitted. On May 1, 2024 at 2:58 a.m., Frazier acknowledged staff's email dated April 29, 2024 and indicated she was still working on her submittal.

9. On June 16, 2024 at 2:15 p.m., staff sent Frazier a final request for the requisite documentation and/or information because she still had not submitted any of the requisite documentation and/or information, providing a deadline of end of business July 17, 2024. Staff informed Frazier that if she *“did not provide the requisite information and documentation by end of business July 17, 2024, this appeal will be presented to the Review Board on the issues of completeness of the appeal and not on the merits of your appeal, which will leave your appeal vulnerable for being dismissed.”*

10. On July 16, 2024 at 1:03 p.m., Frazier requested another copy of the appeals application. Staff provided Frazier a copy of the application that same day at 3:29 p.m. Frazier acknowledged receipt the same day at 3:46 p.m.

11. Staff received no submittals from Frazier by the required deadline of end of business July 17, 2024.

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12. On July 18, 2024 at 7:56 a.m., Frazier requested until July 21, 2024 to submit the requisite documentation and/or information. Staff denied Frazier's request the same day at 7:57 a.m.

13. Staff processed the appeal with the limited information that had been submitted by Frazier.

14. Fairfax County, in its initial submittal, challenged the timeliness of the appeal.

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

Suggested Issues for Resolution by the Review Board

1. Whether the application for appeal to the Review Board is complete.
2. Whether the appeal was untimely.

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# Basic Documents

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**RESOLUTION**

**WHEREAS** the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of enforcement of the Virginia Maintenance Code (VMC), 2018 Edition;

and

**WHEREAS** an appeal was 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 in the matter of

**Appeal No. CDAPPL-2023-00015**

**In RE:** Fairfax County Department of Code Compliance (DCC) v. Susan Frazier

**The portion of the appeal covering Section 304.2 of the VMC is approved (2-1)  
The portions of the appeal covering Sections 302.7 and 303.1 of the VMC  
are denied (2-0 CNV)**

In approving the portion of the appeal covering Section 304.2 of the VMC the Board did not feel the DCC provided sufficient information to document non-compliance of the exterior surfaces of the subject structure with the provisions of the VMC. In denying the portion of the appeal covering Section 302.7 of the VMC the Board agreed that the condition of the accessory structures cited in the NOV (wooden fencing) is not structurally sound or in good repair. In denying the portion of the appeal covering Section 303.1 of the VMC the Board agreed that the swimming pool is not being maintained in a clean and sanitary condition and in good repair.

**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:** February 14, 2024

**Signature:** David Conover  
Chairman, Board of Building Code Appeals

DocuSigned by:

*David Conover*

6DFFDB519E374A1...

**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, 600 East Main Street, Suite 300, Richmond, VA 23219 or by calling 804.371.7150.

I Dennis Hart hereby certify that this is a true copy of a Fairfax County Department of a  
CUSTODIAN

Land Development Services record of which I am a custodian \_\_\_\_\_

DocuSigned by:  
Dennis Hart  
B8CC6DB237D6482...  
CUSTODIAN

I Jay Riat hereby certify that this is a true copy of a Fairfax County  
SUPERVISOR OF CUSTODIAN

Department of a Land Development Services record of which Dennis Hart is the  
CUSTODIAN

custodian and that Dennis Hart reports to me  
CUSTODIAN

DocuSigned by:  
Jay Riat  
F8DAF244B8966414...  
SUPERVISOR OF CUSTODIAN

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

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

- Uniform Statewide Building Code
  - Virginia Construction Code
  - Virginia Existing Building Code
  - Virginia Maintenance Code
- Statewide Fire Prevention Code
- Industrialized Building Safety Regulations
- Amusement Device Regulations



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

Susan Frazier, 3305 Spring Drive, Alexandria, VA 22306, (202) 997-5087, cookiefrazier@gmail.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

Additional Information (to be submitted with this application)

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

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of March, 2024, 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: *Susan Frazier*

Name of Applicant: Susan Frazier  
(please print or type)

**From:** [Sherry Frazier](#)  
**To:** [Luter, Travis \(DHCD\)](#)  
**Subject:** Statement of Specific Relief Sought - CDAPPL-2023-00015 - Susan Frazier  
**Date:** Monday, March 11, 2024 11:23:56 PM

---

1. Swimming pool: The pool is winterized, not unsanitary, or in disrepair.
2. Fence: We are entertaining contractors proposals for spring maintenance.
3. Resolution: I would like the complainant to stop making false accusations and habitual complaints about my home.

Sincerely,

Susan Frazier  
3305 Spring Drive  
Alexandria, VA 22306

March 11, 2024



Documents Submitted  
by  
Susan Frazier

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**From:** [Sherry Frazier](#)  
**To:** [Luter, Travis \(DHCD\)](#); [Foltz, Patrick](#)  
**Subject:** Susan Frazier Appeal  
**Date:** Wednesday, July 31, 2024 4:18:40 PM

---

We ask that the original filing be amended to reflect Virginia Maintenance Code. Susan checked more than one box on her application. Additionally, we ask to amend the Statement of Specific Relief sought regarding Resolution. We ask that the board dismiss the violations under Virginia Maintenance Code Sections 302.7 and 303.1 proposed by Fairfax County Appeal Board.

If further information is needed please let us know.

Thank you.

Sherry Frazier, Caregiver for  
Susan Frazier  
3305 Spring Drive  
Alexandria, VA 22306

July 31, 2024

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# Documents Submitted By Fairfax County

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# County of Fairfax, Virginia

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

Office of the County Attorney  
Suite 549, 12000 Government Center Parkway  
Fairfax, Virginia 22035-0064  
Phone: (703) 324-2421; Fax: (703) 324-2665  
[www.fairfaxcounty.gov](http://www.fairfaxcounty.gov)

July 31, 2024

**BY EMAIL AND FIRST-CLASS MAIL**

Virginia Technical Review Board  
c/o Travis Luter, Secretary  
Main Street Centre  
600 E. Main Street  
Suite 300  
Richmond, VA 23219

**RE: Appeal No. 24-02  
From the Fairfax County Board of Building Code Appeals**

Mr. Luter,

My name is Patrick Foltz and my office represents Gabriel M. Zakkak, Property Maintenance Official for Fairfax County. I write to supplement my previous letter and to respond to correspondence received today from Sherry Frazier. The Property Maintenance Official wishes to submit the following arguments related to the jurisdictional issue of completeness:

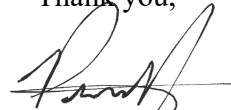
- 1) Susan Frazier, the appellant, has not submitted, with her application, a copy of the Notice of Violation from which she appealed to the Fairfax County Local Board of Building Code Appeals (“LBBCA”).
- 2) In an email from Sherry Frazier dated March 11, 2024, Susan Frazier does not challenge the LBBCA’s decision under Property Maintenance Code Section 303.1 that the wooden fencing is not structurally sound or in good repair. After twenty-one days from her receipt of the LBBCA’s decision, an appeal of the LBBCA’s decision under 303.1 is untimely. In an email from Sherry Frazier dated July 31, 2024, Sherry Frazier includes a statement that she wishes to challenge that ruling. This email is not signed by Susan Frazier and Ms. Sherry Frazier is not a party to this action. Nor is this email timely submitted within twenty-one days of Susan Frazier’s receipt of the LBBCA’s decision. As a result, this statement of specific relief is a nullity and does not revive any appeal ground that Susan Frazier had to challenge the LBBCA’s ruling on the fence.
- 3) Pursuant to 13-VAC5-63-190(H), “a copy of the building official's decision and the written decision of the LBBCA shall be submitted with the application for appeal to the State Review Board” along with the appeal application. Pursuant to the same section, the application for appeal “shall be made to the State Review Board within 21 calendar

days of receipt of the decision to be appealed[.]” To date, Susan Frazier has not filed a copy of the Notice of Violation with the Technical Review Board. As a result, her appeal application is incomplete, untimely, and the Board should dismiss the appeal.

The Property Maintenance Code Official has no additional documents or photographs relative to the jurisdictional issue of completeness to submit at this time.

I am available as above if anything further is required.

Thank you,

A handwritten signature in black ink, appearing to read "Patrick V. Foltz", written over a horizontal line.

Patrick V. Foltz



Additional Documents  
Submitted  
by  
Susan Frazier

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**From:** [Sherry Frazier](#)  
**To:** [Luter, Travis \(DHCD\)](#)  
**Subject:** Re: Appeal to the Review Board for Susan Frazier (Appeal No. 24-02)  
**Date:** Friday, August 30, 2024 12:36:40 PM  
**Attachments:** [image001.png](#)

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## Statement from Susan Frazier Appeal No. 24-02

I submitted my application for appeal in a timely manner within the 21 days. Provided all documentation that was provided to me. Fairfax County has no record of the minutes or photos as stated in an email from Mr. Foltz to Mr. Luter. I signed the original application. Sherry Frazier is my Caregiver. and is inadvertently responsible for helping me. I am disabled and in a nursing home. I ask that the case be dismissed for lack of evidence to support the final resolution.

Sincerely,

Susan Frazier  
3305 Spring Drive  
Alexandria, VA 22306  
August 30, 2024

Susan Frazier

On Tue, Aug 6, 2024 at 1:49 PM Luter, Travis (DHCD) <[Travis.Luter@dhcd.virginia.gov](mailto:Travis.Luter@dhcd.virginia.gov)> wrote:

Parties and counsel:

Attached are two documents created by Review Board staff for the above referenced appeal. The first is the Review Board staff summary which is done for the benefit of the parties and the Review Board members in accordance with established policy. The second document is the record of the appeal containing what is suggested to be given to the Review Board members along with the staff summary.

You may submit additions, corrections or objections to the staff summary, additional documents, and written arguments related to the jurisdictional issues of completeness of the application and timeliness to be included with the information going to the Review Board members for the appeal. They must be received on or before Friday August 30, 2024 to be included in the board package. Be reminded that your entire submittal cannot exceed the allowable 100 pages; when it does you must submit a request to the Secretary for consideration by the Chair.

The appeal hearing before the Review Board is scheduled for October 18, 2024. We will be sending out a notice of hearing and excerpts from the Review Board agenda package with all information for this appeal to you prior to the hearing as well as additional information about the meeting.

Should you have any questions or concerns, please do not hesitate to contact me.

**W. Travis Luter, Sr., CBO**

Secretary to the State Building Code Technical Review Board  
Code and Regulation Specialist  
Virginia Department of Housing and Community Development (DHCD)  
804-371-7163  
[travis.luter@dhcd.virginia.gov](mailto:travis.luter@dhcd.virginia.gov)



**From:** [Sherry Frazier](#)  
**To:** [Luter, Travis \(DHCD\)](#)  
**Subject:** Fwd: Attention: Gabriel M. Zakkak, Director, Department of Code Compliance  
**Date:** Friday, August 30, 2024 1:10:46 PM

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Supplement to Susan Frazier Appeal 24-02

----- Forwarded message -----

**From:** **Sherry Frazier** <[cookiefrazier@gmail.com](mailto:cookiefrazier@gmail.com)>  
**Date:** Tue, Sep 5, 2023 at 9:24 PM  
**Subject:** Attention: Gabriel M. Zakkak, Director, Department of Code Compliance  
**To:** <[703fairfax@fairfaxcounty.gov](mailto:703fairfax@fairfaxcounty.gov)>

Subject: Concern/Complaint

Dear Mr. Zakkak,

I have a problem within the neighborhood. We are being signaled out year after year by a person. This person is watching, stalking, and peering over a privacy fence into our backyard. Making unnecessary complaints to the Department of Code Compliance. Something that your department should recognize and put a stop to it. Harassment is serious business.

There was a complaint filed in relation to our inground swimming pool. The complaint is outrageous and not true. Occasionally, it collects rainwater and rightly so, it is a pool after all. The pool cannot be seen from that person's backyard nor from the street. I have entertained this with DCC on numerous occasions. It is not creating a problem for anyone. Infact, this person has an above-ground pool that I could complain about. For example, there are no pool safety features for the minor children in the home. There is no proper drainage plan when the pool is emptied. This person needs to sweep their own doorstep. This is simply a retaliatory complaint from easements that were long ago created that they did not want to honor as well as a complaint for an unpermitted workshop structure on their property that quite possibly is a different structure and housing minor children.

The inspector was here on 08/04/2023 about a swimming pool complaint. Complaint # DCCCOMP-2023-02853. I returned his call the next day as I got in late. We talked. He was argumentative. I stated that we were not going to entertain the pool inspection, again. Case was closed. I complied with everything that was asked of me from DCC on previous occasions. On 08/30/2023, upcoming holiday weekend, heartless, the inspector doubled back to find something he personally could complain about. I am responding within 3 business days. He left a door knocker about a vehicle that is covered and can barely be seen. He had no business entering the property to nitpick. I've entertained this before too and put a cover on it as requested. I question his actions and whether he personally knows the complainant. There was no other complaint. The inspector's hands are unclean. No basis except retaliation of some sort.

I respect what all of you do. This has to end and be notated against our property that further complaints will not be tolerated. I'm not entertaining these frivolous complaints any longer. We have the right to privacy, peace and not be watched, stalked, targeted. I have personally eliminated names at this time so as to not affect a person's personal record, but you can see

who it was. Thank you for your time and attention today. Please contact me if you have any questions.

Sincerely,

Sherry Frazier, Caregiver  
for Susan Frazier  
3305 Spring Drive  
Alexandria, VA 22306

Tuesday, September 8, 2023

**From:** [Sherry Frazier](#)  
**To:** [Luter, Travis \(DHCD\)](#)  
**Subject:** Fwd: Susan Frazier - CDAAPPL-2023-00015 - February 14, 2024  
**Date:** Friday, August 30, 2024 1:19:41 PM

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Supplemental to Susan Frazier Appeal 24-02

----- Forwarded message -----

**From:** **Sherry Frazier** <[cookiefrazier@gmail.com](mailto:cookiefrazier@gmail.com)>  
**Date:** Wed, Feb 14, 2024 at 7:59 AM  
**Subject:** Susan Frazier - CDAAPPL-2023-00015 - February 14, 2024  
**To:** Hart, Dennis <[Dennis.Hart@fairfaxcounty.gov](mailto:Dennis.Hart@fairfaxcounty.gov)>

Chairman and Members  
Fairfax County Board of Building Code Appeals

We are submitting this statement through Dennis Hart as the appeal department has gone through administrative changes and no longer has a permanent person in that position. A package that was seen for the first time was received from Mr. Hart via email on February 5, 2024. A continuance was requested on February 8, 2024 to the next calendar hearing and it was denied. Susan Frazier is in Mount Vernon Rehab at this time and cannot be present at this hearing. I cannot be present today at this hearing on her behalf. This statement with the information at hand will be brief.

There have been yearly or biyearly complaints about the swimming pool with water in it, some anonymous and some not. We can only presume by the same person. We have addressed these issues with Fairfax County previously in person and by telephone to satisfaction. On August 4, 2023 there was a business card in the door "A Complaint Has Been Filed As To The Swimming Pool" by Matthew M. Solomon. On August 5, 2023 the call was returned. Information relayed was there was water in the pool, mosquitos, rodents. We discussed that the pool has a little water at the bottom it collects when it rains. There are no rodents. There is a submersible pump used to drain collected water. I refused another inspection. It's become a habitual complaint. I wrote a letter to the director asking this stop. A pool should have water in it. The pool is not in disrepair, rodents, or anything else. We presume this to be from the property directly behind us that has its own above ground pool that likely collects the same.

On August 30, 2023 a door knocker was left by M. Soloman. Circled on the knocker was Inoperative Vehicle, Maintenance (unspecified). The vehicle's have been addressed previously and covered with car covers. Maintenance was unspecified at that time. I felt this was a doubling back from the inspector from the interaction on August 5, 2024. I registered my concerns to that division. Not met with any respect about it.

On September 1, 2024 I made a FOIA request for 330 Spring Drive. The response stated there was one complaint in code compliance. I was sent a link to view from FFC Code Enforcement. As I recall it was about the pool being old and water in it, rodents, mosquitos. Nothing else. The link expired and I was not able to capture it.

On or about September 21 there was an official complaint left in the front door. That complaint covered the pool and peeling window paint. We disagree with the pool being in disrepair. It is simply a pool with no water in it that collects rainwater that is pumped out. The windows are not severely peeling as they are trimmed in window metal. Nothing to paint.

On October 15, 2023 we submitted an appeal. Requested February 14, 2024 hearing date.

On February 5, 2024 received an appeal package for the first time. Having viewed it for the first time we disagree with the pool and windows. The pool is not unsanitary. It has no water in it. It is not a commercial pool requiring a cover. The windows are not severely peeling. They are covered in trim metal. The pictures that were taken on the property on September 13, 2023 that are before you were taken without notice. They were not taken from street view generally when there is a complaint. I was always under the assumption that the inspector must be able to see the complaint from the road. In this case the inspector came onto the property as noted in the complaint and utilized adjacent yards to take those pictures before you. This is a violation of a person's right to privacy, trespassing. These things are in our backyard. They can't be seen from the road. It's interesting to note in the complaint there is a foot and half of water in the pool. How would that be known unless you were trespassing to find out. There are privacy fences in the back. So it begs the question, is there a peeper? Certainly there is a habitual complainer. We ask the board to dismiss this complaint, and stop the habitual filing of the same. The pool is private, not commercial, and in our backyard.

I means, Sherry Frazier. We means Susan Frazier and Sherry Frazier. Property means 3305 Spring Drive.

Thank you for your time and consideration in this matter today. We look forward to a resolution today. Please forward a copy of the decision to the appellants address.

We Ask for This,

Susan Frazier  
Sherry Frazier  
3305 Spring Drive  
Alexandria, VA 22306



**From:** [Sherry Frazier](#)  
**To:** [Luter, Travis \(DHCD\)](#)  
**Subject:** Fwd: 3305 Spring Drive  
**Date:** Friday, August 30, 2024 1:26:01 PM

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Supplement to Susan Frazier Appeal 24-02

----- Forwarded message -----

**From:** **Zakkak, Gabriel M** <[Gabriel.Zakkak@fairfaxcounty.gov](mailto:Gabriel.Zakkak@fairfaxcounty.gov)>  
**Date:** Thu, Sep 14, 2023 at 10:40 AM  
**Subject:** 3305 Spring Drive  
**To:** [cookiefrazier@gmail.com](mailto:cookiefrazier@gmail.com) <[cookiefrazier@gmail.com](mailto:cookiefrazier@gmail.com)>  
**Cc:** OPA 703Fairfax <[OPA703Fairfax@fairfaxcounty.gov](mailto:OPA703Fairfax@fairfaxcounty.gov)>

Good morning,

I've had the opportunity to review your address. Our records indicate that we have received a total of 2 concerns lodged against 3305 Spring Drive. The first concern was submitted in May of 2021 for a ground pool collecting water and creating a breeding ground for mosquitos. The caller also stated that squirrels were seen leaving the attic. The second concern was submitted in July of this year stating the underground pool is collecting water and attracting wild animals. I can understand that having a code investigator show up at your house can be frustrating, however, we have a responsibility to investigate safety concerns brought to our attention. You have indicated that the concerns lodged against the property are frivolous. Since we have not been granted permission (in 2021 and now in 2023) to inspect the property, we are unable to determine the validity of the concerns lodged against the property. The easiest way to determine if a violation is legitimate or frivolous is by conducting an inspection. It would be easy for this agency to no longer accept complaints against your property if we had a documented inspection that prove no violations exist.

The most recent concern brought to our attention was submitted anonymously, therefore, we do not know who submitted the concern. Respectfully, I do not appreciate you commenting on my investigators integrity by suggesting "he knows the complainant, "his hands are unclean", and that he is retaliating, as there is no evidence of such.

After reviewing Investigator Solomon's case details there are a few code violations present at the property. Our goal is to work with you towards compliance. In the coming days you will be receiving a Notice of Violation that details the code violations present at the property. Once you have received the Notice, please work with Investigator Solomon toward correcting the violations. If you need additional time to remedy the issues, we are more than happy to work with you.

I understand this is not the response you were expecting, however we have a responsibility to the public to ensure codes are complied with for your safety and the community.

Thanks,

**Gabriel M. Zakkak, Director**

**Department of Code Compliance**

12055 Government Center Parkway, Suite 1016

Fairfax, VA 22035-5500

Main Office 703-324-1300

Direct 703-324-4044

Fax 703-653-1324

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

**DCC Mission** - To promote, protect and maintain a healthy and desirable living environment in Fairfax County.

**From:** Sherry Frazier <[cookiefrazier@gmail.com](mailto:cookiefrazier@gmail.com)>

**Sent:** Tuesday, September 5, 2023 9:25 PM

**To:** OPA 703Fairfax <[OPA703Fairfax@fairfaxcounty.gov](mailto:OPA703Fairfax@fairfaxcounty.gov)>

**Subject:** Attention: Gabriel M. Zakkak, Director, Department of Code Compliance

Subject: Concern/Complaint

Dear Mr. Zakkak,

I have a problem within the neighborhood. We are being signaled out year after year by a person. This person is watching, stalking, and peering over a privacy fence into our backyard. Making unnecessary complaints to the Department of Code Compliance. Something that your department should recognize and put a stop to it. Harassment is serious business.

There was a complaint filed in relation to our inground swimming pool. The complaint is outrageous and not true. Occasionally, it collects rainwater and rightly so, it is a pool after all. The pool cannot be seen from that person's backyard nor from the street. I have entertained this with DCC on numerous occasions. It is not creating a problem for anyone.

Infact, this person has an above-ground pool that I could complain about. For example, there are no pool safety features for the minor children in the home. There is no proper drainage plan when the pool is emptied. This person needs to sweep their own doorstep. This is simply a retaliatory complaint from easements that were long ago created that they did not want to honor as well as a complaint for an unpermitted workshop structure on their property that quite possibly is a different structure and housing minor children.

The inspector was here on 08/04/2023 about a swimming pool complaint. Complaint # DCCCOMP-2023-02853. I returned his call the next day as I got in late. We talked. He was argumentative. I stated that we were not going to entertain the pool inspection, again. Case was closed. I complied with everything that was asked of me from DCC on previous occasions. On 08/30/2023, upcoming holiday weekend, heartless, the inspector doubled back to find something he personally could complain about. I am responding within 3 business days. He left a door knocker about a vehicle that is covered and can barely be seen. He had no business entering the property to nitpick. I've entertained this before too and put a cover on it as requested. I question his actions and whether he personally knows the complainant. There was no other complaint. The inspector's hands are unclean. No basis except retaliation of some sort.

I respect what all of you do. This has to end and be notated against our property that further complaints will not be tolerated. I'm not entertaining these frivolous complaints any longer. We have the right to privacy, peace and not be watched , stalked, targeted. I have personally eliminated names at this time so as to not affect a person's personal record, but you can see who it was. Thank you for your time and attention today. Please contact me if you have any questions.

Sincerely,

Sherry Frazier, Caregiver

for Susan Frazier

3305 Spring Drive

Alexandria, VA 22306

Tuesday, September 8, 2023

**From:** [Sherry Frazier](#)  
**To:** [Luter, Travis \(DHCD\)](#)  
**Subject:** Fwd: Susan Frazier Appeal  
**Date:** Friday, August 30, 2024 1:29:10 PM  
**Attachments:** [image001.png](#)

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Supplement to Susan Frazier Appeal 24-02

----- Forwarded message -----

**From:** **Luter, Travis (DHCD)** <[Travis.Luter@dhcd.virginia.gov](mailto:Travis.Luter@dhcd.virginia.gov)>  
**Date:** Thu, Aug 1, 2024 at 7:19 AM  
**Subject:** RE: Susan Frazier Appeal  
**To:** Sherry Frazier <[cookiefrazier@gmail.com](mailto:cookiefrazier@gmail.com)>, Foltz, Patrick <[Patrick.Foltz@fairfaxcounty.gov](mailto:Patrick.Foltz@fairfaxcounty.gov)>

Review Board staff received this email.

**W. Travis Luter, Sr., CBO**

Secretary to the State Building Code Technical Review Board

Code and Regulation Specialist

Virginia Department of Housing and Community Development (DHCD)

804-371-7163

[travis.luter@dhcd.virginia.gov](mailto:travis.luter@dhcd.virginia.gov)



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**From:** Sherry Frazier <[cookiefrazier@gmail.com](mailto:cookiefrazier@gmail.com)>  
**Sent:** Wednesday, July 31, 2024 4:17 PM  
**To:** Luter, Travis (DHCD) <[Travis.Luter@dhcd.virginia.gov](mailto:Travis.Luter@dhcd.virginia.gov)>; Foltz, Patrick <[Patrick.Foltz@fairfaxcounty.gov](mailto:Patrick.Foltz@fairfaxcounty.gov)>  
**Subject:** Susan Frazier Appeal

We ask that the original filing be amended to reflect Virginia Maintenance Code. Susan checked more than one box on her application. Additionally, we ask to amend the Statement of Specific Relief sought regarding Resolution. We ask that the board dismiss the violations under Virginia Maintenance Code Sections 302.7 and 303.1 proposed by Fairfax County Appeal Board.

If further information is needed please let us know.

Thank you.

Sherry Frazier, Caregiver for

Susan Frazier

3305 Spring Drive

Alexandria, VA 22306

July 31, 2024

**From:** [Sherry Frazier](#)  
**To:** [Luter, Travis \(DHCD\)](#)  
**Subject:** Fwd: Susan Frazier Appeal  
**Date:** Friday, August 30, 2024 1:31:42 PM  
**Attachments:** [image001.png](#)  
[image001.png](#)

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----- Forwarded message -----

From: **Sherry Frazier** <[cookiefrazier@gmail.com](mailto:cookiefrazier@gmail.com)>  
Date: Thu, Aug 1, 2024 at 3:21 PM  
Subject: Re: Susan Frazier Appeal  
To: Luter, Travis (DHCD) <[Travis.Luter@dhcd.virginia.gov](mailto:Travis.Luter@dhcd.virginia.gov)>  
Cc: Foltz, Patrick ([patrick.foltz@fairfaxcounty.gov](mailto:patrick.foltz@fairfaxcounty.gov)) <[patrick.foltz@fairfaxcounty.gov](mailto:patrick.foltz@fairfaxcounty.gov)>, Potts, Richard (DHCD) <[Richard.Potts@dhcd.virginia.gov](mailto:Richard.Potts@dhcd.virginia.gov)>

Yes, the submittal was. However, I did not receive the supplemental until 4:58 pm on July 31, 2024 and not seen until 8 pm.

On Thu, Aug 1, 2024, 7:33 AM Luter, Travis (DHCD) <[Travis.Luter@dhcd.virginia.gov](mailto:Travis.Luter@dhcd.virginia.gov)> wrote:

Sherry,

The submittal by Fairfax County was timely as it was submitted prior to the established deadline given in the staff email dated July 24, 2024. No further submittals will be accepted at this time; however, you will have an opportunity to provide a final submittal.

**W. Travis Luter, Sr., CBO**

Secretary to the State Building Code Technical Review Board

Code and Regulation Specialist

Virginia Department of Housing and Community Development (DHCD)

804-371-7163

[travis.luter@dhcd.virginia.gov](mailto:travis.luter@dhcd.virginia.gov)

Supplement Susan Frazier Appeal 24-02



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**From:** Sherry Frazier <[cookiefrazier@gmail.com](mailto:cookiefrazier@gmail.com)>  
**Sent:** Thursday, August 1, 2024 4:38 AM  
**To:** Luter, Travis (DHCD) <[Travis.Luter@dhcd.virginia.gov](mailto:Travis.Luter@dhcd.virginia.gov)>  
**Subject:** Susan Frazier Appeal

If we may add anything else please let us know. We received an untimely supplemental from Fairfax County at 4:58 pm on 07/31/2024.

Thank you

Sherry Frazier, Caregiver for  
Susan Frazier



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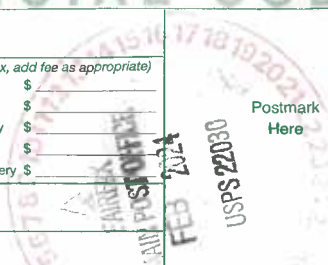
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## Addendum

Petition for Reconsideration  
for A10 Capital LLC  
(Appeal No. 24-05)

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October 7, 2024

By Email

W. Travis Luter, Sr., CBO  
Secretary to the State Building Code Technical Review Board  
Code and Regulation Specialist  
Virginia Department of Housing and Community Development (DHCD)  
[travis.luter@dhcd.virginia.gov](mailto:travis.luter@dhcd.virginia.gov)

Re: Petition for Reconsideration of Final Order Dated September 20, 2024  
(received by email September 23, 2024) on the Appeal of A10 Capital LLC;  
Appeal No. 24-05

Dear Mr. Luter:

This firm represents A10 Capital LLC (“A10”) in the above-referenced appeal (the “Appeal”). Pursuant to the Virginia Administrative Process Act, specifically Virginia Code § 2.2-4023.1, A10 submits this Petition for Reconsideration (the “Petition”) of the Final Order dated September 20, 2024 (the “Final Order”), which was issued by the Virginia State Building Code Technical Review Board (the “Board”) in response to A10’s Appeal, which was assigned Appeal No. 24-5. A10 was served with the Final Order by email on September 23, 2024.

A10 respectfully states the following grounds in support of its request for the Board’s reconsideration of its Final Order: first, A10 asks the Board to reconsider its finding that the structures on the Real Property (defined below) are “unsafe structures” based on a lack of evidence to that effect and the fact that the structures on the Real Property are vacant, secured, and structurally sound; second, A10 requests that the Board reconsider its demolition order for the structures on the Real Property based on the facts presented in its Appeal and this Board’s prior rulings; third, A10 seeks reconsideration and guidance on the terms of the Final Order with respect to the implication and understanding that the City of Hampton cooperate with A10 regarding the issuance of building permits for rehabilitation of the Real Property; and fourth, there has been a material change in circumstances in the underlying facts presented to the Board at the August 16, 2024 hearing (the “Hearing”), which A10 believes must be disclosed and may be a source of further reconsideration of the terms of the Final Order.

## **A. Unsafe Structures Under the Virginia Maintenance Code (“VMC”).**

- 1) This Board found “that the buildings located at 2101-2121 Kecoughtan Road were unsafe structures or structures unfit for human occupancy based on the overwhelming amount of evidence provided in the record showing the unsafe condition of the structures on the property.” Final Order, at p. 4. A10 does not contest that the structures at 2101-2121 Kecoughtan Road, Hampton, Virginia (the “Real Property”)

include “structures unfit for human occupancy,” as that phrase is defined in the Virginia Maintenance Code (“VMC”), which defines that term as follows:

[a]n existing structure (i) determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure . . . because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential equipment, or (ii) the required plumbing and sanitary facilities are inoperable.

VMC, p. 15. Indeed, the deferred maintenance at the Real Property underscores why the buildings are no longer occupied. In addition to explaining that the buildings have been unoccupied since November 2023, A10 presented evidence that the City revoked the certificates of occupancy for the buildings on April 8, 2024. *See* pp. 262-71 of the record.

- 2) Distinct from the definition of “structures unfit for human occupancy,” the VMC defines an “unsafe structure” as follows:

[a]n 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.

VMC, p. 15.

- 3) In considering the three prongs of the “unsafe structure” definition and the fact that the structures are and have been vacant and secure for almost a year, for the Board to find that the Real Property had “unsafe structures,” the record would have needed to include evidence that the buildings (i) are a danger to the health, safety, and welfare of the public; (ii) contained unsafe equipment; or (iii) were in danger of partial or complete collapse. None of these required elements for an “unsafe structure” finding were established by the evidence provided in the record, at the Hearing, or in the NOV.

**Danger to the Public**

- 4) A10 provided evidence that the buildings located at the Real Property are unoccupied and secure from public entry, that the water is off, that only the electricity running on site is for house lights, and that the receiver monitors the Real Property for any activity to maintain the secure and vacant status. This evidence is sufficient to establish that the structures are not a danger to the health, safety, or welfare of the public.
- 5) The City’s generic fire concerns raised for the first time at the Hearing do not provide evidence sufficient to show that the structures pose a safety risk to the public. Further, there is nothing in the NOV that supports any finding that there are any risks to the public emanating from the Real Property.

**Unsafe Equipment**

- 6) The City made no argument that the buildings contain unsafe equipment. Nothing in the NOV indicates the buildings contain unsafe equipment.

**Likelihood of Partial or Complete Collapse**

- 7) A10 provided multiple expert reports that concluded the structures on the Real Property, even the fire-damaged building, are structurally sound. The City provided no contradictory evidence to suggest that A10's expert reports were incorrect. While the City called into question A10's experts' access to the structures, suggesting the experts should have torn down more plaster and/or drywall ceilings and walls to reach more robust conclusions, the previously fire-damaged building shows the skeleton structure of the buildings. A10's expert, Mr. Mish, testified at the Hearing that he was able to use that structural data, which clearly shows the type of construction, foundation, and materials that make up the in-tact structures, to conclude there is no likelihood of partial or complete structural collapse at the Real Property. Further, there is nothing in the NOV's that suggests partial or complete collapse is likely. All the evidence presented at the Hearing, including the City's competing expert reports, suggests the buildings are, in fact, structurally sound.
- 8) To be certain, the City's evidence shows that the buildings need maintenance and rehabilitation in their current condition. However, the Board's conclusion that the buildings are "unsafe structures" is not supported by the evidence presented in the record or at the Hearing. This conclusion is also not supported by the NOV's.
- 9) On this basis, A10 requests that the Board reconsider its finding that the buildings at the Real Property are "unsafe structures" under the VMC. The structures do not pose any danger to the public, they do not contain unsafe equipment, and they are not likely to collapse.
- 10) Alternatively, if the Board reached its "unsafe structures" conclusion simply because the buildings are damaged, decayed, or dilapidated, as there is no evidence that the buildings exhibit faulty construction or unstable foundation, A10 asserts this conclusion also merits reconsideration. Romanette three of the "unsafe structures" definition in the VMC requires a finding that the structures are so damaged, decayed, or dilapidated that "partial or complete collapse is likely." *Id.* A finding of damage, decay, or dilapidation alone, without a finding that the buildings are likely to collapse, is an insufficient basis to meet the definition of "unsafe structure." If the Board based its "unsafe structure" conclusions on such a partial reading of romanette three of the definition, that conclusion should be reconsidered based on the statutory construction of the defined term and prior opinions of this Board. *See In re Sotos, 95-9, at p. 5.*

**B. Demolition under the NOV's and the VMC.**

- 1) Demolition of the structures on the Real Property is not justified based on the NOV's, the evidence presented, the precedent of this Board, or the requirements of the VMC because the buildings are secure, vacant, and structurally sound.
- 2) The plain language of section 106.1 of the VMC states the following:  
[t]his section shall apply to existing structures which are classified as unsafe or unfit for human occupancy. All conditions causing such structures to be classified as unsafe or unfit for human occupancy shall be remedied *or as an alternative to correcting such conditions, the structure may be vacated*

*and secured against public entry* or razed and removed. Vacant and secured structures shall still be subject to other applicable requirements of this code. Notwithstanding the above, when the code official determines that an unsafe structure or a structure unfit for human occupancy constitutes *such a hazard* that it should be razed or removed, then the code official shall be permitted to order the demolition of such structures in accordance with applicable requirements of this code.

*Id.* (emphasis added).

- 3) As an initial matter, there has been no finding in the NOV's or by this Board that the buildings "constitute such a hazard" to warrant demolition. The evidence and testimony at the Hearing were clear that the buildings are vacant and secure. There were no mentions of hazard findings during the Hearing or in the record.
- 4) Further, this Board in its *Sotos* opinion found that if "buildings are not deteriorated to the point where there is danger of structural collapse, . . . the order for demolition is not warranted." *Id.* at 95-9, p. 5.
- 5) In *Jennings*, this Board called for demolition upon proof of "severe water damage caused by a roof leak and termite infestation in the structural members" of the building. *Id.* at 11-11, p. 3. Those facts were not presented at the Hearing and are not in the NOV's.
- 6) Finally, in the Board's *Rowson* opinion, demolition was not called for, even on evidence of "an independent structural engineer's evaluation . . . that indicated structural damage to the home's wall and floor framing." *Id.* 15-17, at pp. 4-5. Instead, the Board called for further evaluation before a demolition order was considered appropriate, given questions from the owner about the engineer's ability to examine the complete structure of the buildings. *Id.*
- 7) These opinions suggest that demolition is an outcome that should be avoided unless it can be shown without question that partial or complete collapse is imminent. Those facts are not in the record before this Board. There is simply no evidentiary basis or precedent from this Board to justify demolishing these structurally sound buildings.
- 8) Further, neither the NOV's nor the Final Order make any finding that the structures constitute "such a hazard" to warrant demolition. To the contrary, even the City's own reports and evidence indicate that is not remotely the case, and that the buildings can and should be renovated.
- 9) Finally, the conclusions of the Final Order do not address or even raise the fact that the buildings have been secure and empty since November of 2023, even prior to the issuance of the NOV's. Vacant and secure buildings are an alternative remedy under the plain language of 106.1 of the VMC, which conditions are and have been present in these structures. Further, given the timing of the vacant and secured status of the buildings, A10 questions why the NOV's were ever even issued. The Final Order did not address this issue either.
- 10) For these reasons, A10 asks this Board to reconsider the demolition finding in its Final Order.



### **C. Community Support and Partnership.**

#### **1) Access to Federal and State Grants to Improve the Real Property.**

- a. The Board made it clear at the Hearing that it expects the future owner of the Real Property to work with the City to bring the Real Property back into constructive use.
- b. A10 has long pursued such a relationship with the City. A10 has, throughout this appeal process, pursued cooperation; requested meetings; produced requested documents, budgets, and reports; proposed forbearance terms; and repeatedly tried to engage the City to develop a rehabilitation plan to restore this Real Property to community and economic productivity. Those efforts having failed prior to the Hearing, A10 asked a lobbyist to find other avenues for cooperation with the City.
- c. In the weeks just prior to the Hearing, A10's lobbyist was successful in identifying opportunities for significant federal and state grants that can be used to improve the Real Property. A10 understood that such funds could be used by any new owner directly to improve the conditions at the Real Property. Such funds, used in conjunction with any owner financing secured, could be a meaningful positive development for the redevelopment of the Real Property and for the surrounding community.
- d. A10 understands that any successful grant application related to the Real Property will require direct consent from someone in City government, along with some limited cooperation from the City (in the form of signing off on application forms). A10 understands that the grant process requires the City to confirm it wants the money and the contemplated development at the subject property. Without the City's support, grant applications will not be accepted.
- e. Considering these requirements, in the weeks prior to the Hearing, A10's lobbyist communicated with and circulated a draft form of a Memorandum of Understanding (the "MOU") related to grant requests to a City of Hampton City Council Member who had expressed sincere support for the redevelopment of the Real Property. A copy of the MOU is attached as Exhibit A.
- f. After the Hearing, on August 20, 2024, counsel for the City contacted A10's counsel to confirm that the MOU was still something A10 was asking the City to consider. On August 21, 2024, A10 confirmed that the MOU was still open for consideration and further discussion.
- g. After receiving no further communications from the City or the City Council Member on the MOU, on September 13, 2024, A10 followed-up. Only on October 2, 2024, did the City reply. However, the reply indicated only that the MOU "is not an agreement that [the City] can enter into at this time." Similarly, in early 2024, the City's response to A10's proposed draft of a forbearance agreement offered for discussion was that "[a]t this time, the City is not interested in signing a forbearance agreement." While the City has consistently told A10 that it is not the City's job to give guidance on the Real Property, A10 believes the status of these buildings calls for immediate action and

cooperation. A10's numerous attempts to open discussions have been rebuffed or summarily subject to open-ended delay. The City's apparent reticence to participate in cooperative dialogue with A10 threatens to undermine the Board's directives to the parties in the context of the Final Order.

**2) Safety Communications Regarding the Real Property.**

- a. Directly after the Hearing and after listening to the safety concerns of the Board, A10 communicated with the City seeking cooperative discussions to address any safety issues that concerned the City, whether raised by police, fire, or code official. In an August 21, 2024 email and in a follow-up email of September 13, 2024, A10 again asked the City to engage in cooperative discussions regarding safety measures on site that may concern the City.
- b. While there have been no new violations issued at the Real Property, there have been no safety discussions between A10 and the City either. Instead, only on October 2, 2024, the City advised that A10 secure all windows and doors pursuant to an International Arson Association Investigators' guide, to resecure existing fencing, to place a non-concrete barrier at the entrance to the parking lot, and to confirm interior lighting is disconnected while maintaining power to the parking lot lights. The City's email offered to connect A10 with fire marshals, building officials, and police officers if we had questions about their recommendations. Again, the City did not engage in any dialogue.
- c. Further, the first-floor windows and all doors on site are presently secure, the existing fencing around the fire-damaged building is secure and intact, the non-concrete parking-lot barrier description is lip service to safety, and the concept of leaving the buildings dark while illuminating only the parking lot is an invitation to trouble. This latest response to a request for dialogue is not close to productive engagement from the City.

**3) A Path Forward at the Real Property.**

- a. A10 does not raise the lack of dialogue and cooperation between A10 and the City to create additional acrimony. A10 has no desire to drive a wedge further between itself and the City. However, A10 is concerned by the City's persistent refusal to have a dialogue on new developments at the Real Property.
- b. A10 appreciates that the City has more projects and endeavors than this single parcel. However, given the apprehensions of the City at the Hearing, A10 had the impression that this parcel and its continued presence is of the utmost concern.
- c. A10 is concerned that the City's persistent delays will extend to the forthcoming permit procurement process that must be undertaken expeditiously to avoid demolition. Demolition of these structures is almost a certainty without the City's good faith cooperation in facilitating the permitting process.
- d. If the City is simply waiting out the Final Order's extension of the timeline to demolish the structures, any potential purchaser of the Real Property will waste any time and resources they invest, not to mention their purchase price, trying to redevelop the Real Property.

- e. A10 has already spent no less than \$1.2 million to get to this point in responding to multiple sets of NOV's, trying to meet the City's expectations, preserving the Real Property, and exhausting administrative remedies related to preventing demolition.
- f. That the buildings are simply going to be demolished in nine months, while the City continues to avoid productive discussions and cooperation, is an avoidable and inequitable result.
- g. In this Board's *Sotos* opinion, the "code official [was] directed to *expediently issue* any such permits." *Id.* 95-9, at p. 7 (emphasis added.).
- h. Accordingly, A10 urges this Board to reconsider the means by which it chose to execute this remedy for this Real Property. A10 asks the Board to create parameters and to create a structure focused on compelling the City to engage in good faith cooperation during the permitting process to preserve the opportunity and probability for a productive outcome for this Real Property.

#### **D. Material Change in Circumstances.**

- 1) During A10's presentation at the Hearing, A10 provided detail to the Board related to the September 2023 auction. To assist in your reconsideration, A10 will quickly repeat the relevant facts. After a successful auction, the resulting Real Property sale transaction (the "Sale Transaction") was delayed. This delay started with clearing a certain *lis pendens* in the land records related to the Real Property. Once the *lis pendens* was cleared, the delay continued with the code official's issuance of November 2023 notices of violation, which called for demolition of the Real Property in 30 days. While these first notices of violation eventually were withdrawn, the Sale Transaction's delay continued when the NOV's were issued in February of 2024.
- 2) At the Hearing, A10 explained its understanding that the high bidder at the auction (the "Buyer") needed a determination from this Board that the buildings would not be demolished based on the NOV's because the buildings are vacant and secure. A10 explained that after such a determination, time was needed for the Buyer to finalize financing and to close the Sale Transaction. Once the Buyer had title, renovations and the repairs called for in the NOV's could start.
- 3) As the Board's deliberations regarding the appropriate timetable for demolition carefully considered these facts presented during the Hearing, A10 feels compelled to provide the Board with an update on a material change in circumstances that merits reconsideration of the timetable provided in section D on pages 8-9 of the Final Order.
- 4) At the time of the Hearing, the Buyer was bound under the terms of the eighth amendment to the foreclosure sale agreement, originally dated September 27, 2023 (with all amendments, the "Foreclosure Sale Agreement"). The terms of the eighth amendment to the Foreclosure Sale Agreement extended the expiration of the Foreclosure Sale Agreement to August 31, 2024.
- 5) At the Hearing, A10 represented its expectations to the Board, namely, that a realistic extension of time to complete repairs before the scheduled demolition of the structures on the Real Property would allow the Buyer to move to an expeditious closing of the

Sale Transaction. Thereafter, the Buyer would address the NOVs during the course of its renovation/rehabilitation of the Real Property. With those two events, the demolition outcome for the structures could be averted.

- 6) Instead, after the Hearing results were communicated to the Buyer, including the generous extension of demolition timing from thirty days to nine months, the Buyer allowed the Foreclosure Sale Agreement to expire on its own terms and effectively terminated the Sale Transaction.
- 7) With the termination of the Foreclose Sale Agreement more than a month ago, A10 is compelled, under applicable law and its loan documents, to conduct a new trustee's sale and auction under its deed of trust to identify a new owner. A10 anticipates that a new sale process for the Real Property will be conducted during the fourth quarter of 2024. Processes are underway to pursue such an outcome.
- 8) While A10 is moving with all deliberate speed to properly schedule and conduct a second trustee's sale and auction so that title to the Real Property can be conveyed to a new owner, this rescheduled sale process, and all of its associated requirements and time constraints, requires additional time.
- 9) Because of this material change, A10 requests the Board allow additional time for the purchaser of the Real Property to obtain building permits. Appropriate steps have been taken, and will continue to be taken, to secure the buildings to make them safe and keep them vacant.

In summary, the demolition order in this Board's Final Order is an obvious deterrent to potential purchasers. No matter how much time is permitted before demolition, the simple fact that the Board's demolition order exists will impede progress toward any positive outcome for this Real Property and may result in its ultimate demolition. Perhaps that outcome is what the City wants given its lack of cooperation.

Notwithstanding the realities of this Real Property, there are no facts before this Board that justify the "unsafe structures" finding or the resulting demolition order for these structures. Instead, the Final Order seems to be working as an unintentional accommodation of the City's desired outcome for the Real Property - demolition. Respectfully, A10 requests that the Board reconsider its findings and conclusions, to facilitate an outcome that will allow for the rehabilitation of these buildings and avoid demolition.

For purposes of avoiding any confusion going forward, in addition to this Petition, A10 also intends to appeal the Final Order to the City of Hampton Circuit Court as is required under the deadlines and requirements of Rule 2A:2 of the Supreme Court of Virginia.

Sincerely,



Scott C. Miller

Petition to Reconsider Appeal No. 24-05

October 7, 2024

Page 9

cc: Ware, Pete (pware@a10capital.com)  
Palmer, Grady (gpalmer@williamsmullen.com)  
Mikel, Kimberly (kdmikel@hampton.gov)  
Ligon, Anne (anne.ligon@hampton.gov)  
Law, Brandi (brandi.law@hampton.gov)  
Capron, Phil (phil@missionfirstcapital.com)  
Potts, Richard (DHCD) (Richard.Potts@dhcd.virginia.gov)  
Moldovan, Florin (DHCD) (Florin.Moldovan@dhcd.virginia.gov)  
Messplay Iv, Paul (DHCD) (Paul.MessplayIV@dhcd.virginia.gov)  
McLemore, Jennifer (jmclemore@williamsmullen.com)  
Zorich, Steve (szorich@a10capital.com)

# Exhibit A

## MEMORANDUM OF UNDERSTANDING

**Parties:**        **The City of Hampton, Virginia** (the “City”)  
                         **A10 Capital, LLC**, 800 West Main Street, Suite 1100, Boise, Idaho 83702 (the  
                         “Sponsor”)

**Project:**        The building currently known as **Colonial Landing** apartment complex at 2101-  
                         2121 Kecoughtan Road, Hampton, Virginia 23661 (“Colonial Landing”)

### **Recitals:**

Given the severe national shortage of workforce housing, the parties jointly wish to preserve 92 units of affordable housing;

The parties agree that rehabilitating and raising the quality of life for residents at the Colonial Landing is essential to this goal of preservation;

The City has deemed Colonial Landing as a public nuisance, and wishes the building(s) be brought back to code for public safety;

The Sponsor, either directly or through affiliates, seeks to rehabilitate the multifamily property currently known as “Colonial Landing” at 2121 Kecoughtan Road in the city of Hampton, Virginia;

To satisfactorily accomplish the rehabilitation, Sponsor and affiliates estimate that a budget in excess of \$1 million will be required, and City and Sponsor agree that state- and federally-funded grants would augment and enhance the rehabilitation of Colonial Landing;

To raise energy efficiency standards and further increase quality of life and affordability for residents, City and Sponsor agree to jointly pursue state- and federally-funded grants that would further these efficiency efforts; and

Sponsor has been in contact with members of Virginia’s Congressional Delegation and has offered Colonial Landing as a legislative and budgetary priority.

### **AGREEMENT**

**Sponsor Responsibilities:** Sponsor is committed to using experienced licensed contractors to assist in the remediation of cited deficiencies;

Sponsor is committed to maintaining the affordable and workforce-housing character of Colonial Landing;

Sponsor will ensure that all units at Colonial Landing fully comply with all state and local safety standards and building codes;

Sponsor will provide for the security of the premises during rehabilitation; and

Sponsor will continue to advocate for state and local funding grants to reinvest into Colonial Landing that further the quality of life for future residents.

City Responsibilities: City will engage and cooperate with Sponsor to advance above stated goals of preservation, rehabilitation and increased quality of life at Colonial Landing; this includes discussions with state and Federal agencies, Congressional offices and other avenues of funding streams available to Colonial Landing redevelopment;

City will provide a dedicated point of contact for ongoing engagement and routine information sharing and joint applications for funding; and

During the time of rehabilitation, the city agrees to conduct no actions to further the demolition order in effect.