

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, November 1, 2024 - 10:00am

Virtual Meeting

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- I. Roll Call
- II. Approval of Reconsideration Order
 - In Re: A10 Capital LLC
Appeal No. 24-05
- III. Approval of Amended Final Order
 - In Re: A10 Capital LLC
Appeal No. 24-05
- IV. Public Comment

STATE BUILDING CODE TECHNICAL REVIEW BOARD

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(The Apartment and Office Building Association of Metropolitan Washington)

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(American Institute of Architects Virginia)

Eric Mays

(Virginia Building and Code Officials Association)

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James S. Moss

(Virginia Building and Code Officials Association)

Elizabeth C. White

(Commonwealth at large)

Aaron Zdinak, PE

(Virginia Society of Professional Engineers)

1 VIRGINIA:

2
3 BEFORE THE
4 STATE BUILDING CODE TECHNICAL REVIEW BOARD
5

6 IN RE: Appeal of A10 Capital LLC
7 Appeal No. 24-05
8

9 Decision on Petition for Reconsideration
10

11
12 At its meeting on October 18, 2024, the Review Board members considered a Petition for
13 Reconsideration concerning the above referenced matter submitted by A10 Capital LLC (A10)
14 alleging that the property was not an unsafe structure, seeking guidance for cooperation by the
15 City of Hampton for permitting, asking the Review Board to reconsider its demolition order, and
16 disclosing a material change that may be a source of further reconsideration.

17 After consideration, the Review Board members found that the petition for
18 reconsideration raised issues worthy of reconsideration and, through proper motion granted the
19 petition for reconsideration because (1) the language in the initial final order appeared to be a
20 demolition order by the Review Board, which is outside the scope of its authority, and by amending
21 the language as established in the amended final order, the Review Board concurs with the City
22 and local appeals board that demolition of the structures is a proper remedy and that the City may
23 demolish the structure if compliance is not met with the allotted time and (2) the loss of buyer by
24 A10 warranted an extension of time to comply allowing A10 the opportunity to conduct another
25 foreclosure auction, reach settlement, closing, and obtain the necessary building permits to
26 renovate. The Board subsequently amended the final order (attached).

27
28
29 _____
30 Chairman, State Building Code Technical Review Board

31 Date entered _____ November 1, 2024 _____

1 VIRGINIA:
2

3 BEFORE THE
4 STATE BUILDING CODE TECHNICAL REVIEW BOARD
5

6
7 IN RE: Appeal of A10 Capital LLC
8 Appeal No. 24-05
9

10 DECISION OF THE REVIEW BOARD
11

12 **This case decision was modified in accordance with §2.2-4023.1 *Reconsideration* due to the
13 Petition for Reconsideration submitted by A10 Capital LLC on October 8, 2024. The Petition
14 for Reconsideration was considered and granted at the October 18, 2024 Review Board meeting.
15 Subsequently, at that same meeting, the conclusions of the Review Board in Items C and D of
16 Section IV. Conclusion of this final order were amended; otherwise, this final order remains
17 undisturbed.**
18

19 I. Procedural Background
20

21 The State Building Code Technical Review Board (Review Board) is a Governor-
22 appointed board established to rule on disputes arising from application of regulations of the
23 Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of
24 Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process
25 Act (§ 2.2-4000 et seq. of the Code of Virginia).
26

27 II. Case History

28 On February 20, 2024, the City of Hampton Community Development Department,
29 Property Maintenance and Zoning Enforcement Division (City), the agency responsible for the
30 enforcement of Part III of the 2018 Virginia Uniform Statewide Building Code (VUSBC or VMC),
31 issued Notices of Violation (NOV) to A10 Capital LLC (A10) as well as Colonial Landing
32 Apartments LLC, 2121 Kecoughtan Holdings LLC, Kyle R. Stephenson, and KRS Holdings LLC,
33 for the residential structures on the property located at 2101, 2103, 2105, 2107, 2109, 2111, 2113,
2115, 2117, 2119, and 2121 Kecoughtan Road, in the City of Hampton, for the unsafe structures,

34 citing VMC Section 106.1 *Unsafe structures or structures unfit for human occupancy* and
35 providing the following:

36 *“This section shall all apply to existing structures which are classified as unsafe or*
37 *unfit for human occupancy. All conditions causing unsafe or unfit for human*
38 *occupancy shall be remedied or as on alternative to correcting such conditions, the*
39 *structure may be vacated and secured against public entry or razed and removed.*
40 *Vacant and secured structures shall still be subject to other applicable*
41 *requirements of this code. Notwithstanding the above, when the code official*
42 *determines that an unsafe structure or a structure unfit for human occupancy*
43 *constitutes such a hazard that it should be razed or removed, then the code official*
44 *shall be permitted to order the demolition of such structure in accordance with*
45 *applicable requirements of this code.*

46
47 *Note: Structures which become unsafe during construction are regulated under the*
48 *VCC.*

49
50 *Demolish the structure within 30 days or bring the entire structure up to code by*
51 *complying with the violations noted on the attached spreadsheet. Additionally,*
52 *complete all recommendations outlined in the following reports that are also*
53 *attached:*

54
55 *MISH Engineering Concepts, PLC dated January 31,2024, Complete Care*
56 *Plumbing LLC dated January 26,2024, S&W Power Solutions, LLC received*
57 *January 31, 2024, and Partner Engineering and Science, INC. dated January 31,*
58 *2024.”*

59
60 A10 filed an appeal to the City of Hampton Building Code Board of Appeals (local appeals
61 board). The local appeals board upheld the decision of the code official. A10 further appealed to
62 the Review Board on May 17, 2024.

63 Appearing at the Review Board meeting for A10 were Kyle L. Stephenson, President of
64 KRS Holdings LLC (Court appointed receiver for the real property); Andrew Levine, Property
65 Manager, KRS Holdings LLC; Jennifer McLemore, Substitute Trustee for the Deed of Trust from
66 Colonial Landing Apartment LLC; Everett Mish, Principle Mish Engineering Concepts P.L.C.;
67 Steve Zorich, Vice-President, Head of Special Services for A10; Peter Ware, General Counsel for
68 A10; and Attorney Scott Miller. Appearing at the Review Board meeting for the City were

69 Attorneys Anne Ligon and Brandi Law and Kim Mikel, Director of Community Development and
70 Property Maintenance Official.

71 III. Findings of the Review Board

72 A. Whether to uphold the decision of the City and the local appeals board that the
73 structures located at 2101-2121 Kecoughtan Road are unsafe structures or structures unfit for
74 human occupancy in accordance with VMC Section 106.1 *Unsafe Structure or Structures Unfit*
75 *for Human Occupancy.*

76 A10 argued that the structures were not unsafe as defined by the VMC; furthermore, were
77 not in danger of partial or complete collapse as they have been standing since 1938. A10 argued
78 that the structures were vacant. A10 further argued that all windows, doors, and any other
79 openings in the structures on entire first floor were boarded preventing entry to the structures by
80 the public and eliminating any potential danger of contact with any equipment remaining within
81 the structures. A10 also argued that the electricity to all individual units had been shut off and
82 only the site lighting remained on to provide light around the property for security purposes. A10
83 further argued that the building with fire damage was secured behind pad locked fencing. Lastly,
84 A10 argued that all pest issues were resolved at the time the NOV's were issued and remain
85 resolved.

86 The City argued that 62 of the 80 units, which was over 75% of the units, had severe
87 water damage, which continues to be an issue, and had resulted in partial collapsed ceilings, wall
88 damage, and floor buckling. The City further argued that the exterior had water ponding on the
89 flat roofs which were soft and deteriorated, stair step cracking, general poor conditions on the
90 exterior and interior of the structures, and severe plumbing leaks throughout the structures. The
91 City also argued that without a proper evaluation by an engineer, as requested by the City and
92 conveyed was necessary in the MISH expert report, the structural integrity of the structure could

93 not be determined and/or verified. The City also argued that on several occasions the boarded
94 openings had been opened and vagrants and criminals had entered the buildings. The City
95 further argued that the electricity to the entire property should be shut off, further arguing that
96 active electricity on the site coupled with numerous water leaks both from the weather and
97 leaking plumbing systems posed a fire hazard and danger to the public. The City argued that the
98 collective of these issues coupled with years of lack of maintenance led to the code official to
99 determine the structures were unsafe and demolition was necessary. The City concurred that the
100 structures are vacant.

101 The Review Board found that the buildings located at 2101-2121 Kecoughtan Road were
102 unsafe structures or structures unfit for human occupancy based on the overwhelming amount of
103 evidence provided in the record showing the unsafe condition of the structures on the property.

104 B. Whether to uphold the decision of the City and the local appeals board that the
105 structures located at 2101-2121 Kecoughtan Road must comply with all recommendations of the
106 four A10 expert reports (MISH Engineering Concepts, PLC dated January 31, 2024, Complete
107 Care Plumbing LLC dated January 26, 2024, S&W Power Solutions, LLC received January 31,
108 2024, and Partner Engineering and Science, INC. dated January 31, 2024).

109 A10 argued that the expert reports, which went far beyond the scope of the VMC, were
110 not properly included in the NOV as code violations because the recommendations in the expert
111 reports were not tied to a particular code section, as required in VMC Section 105.4; therefore,
112 should not be treated as code violations requiring compliance.

113 The City argued that the expert reports did not include a thorough investigation by means
114 of wall and ceiling removal requested by the City and conveyed was necessary in the MISH
115 expert report; however, the expert reports substantiated the 350 VMC violations cited by the
116 City. The City further argued that most of the recommendations listed on the expert reports were

117 related to stopping or addressing immediate concerns of water intrusion. The City also argued
118 that the recommendations of the expert reports needed to be completed to make the structures
119 safe and habitable.

120 The Review Board found that the recommendations listed in the expert reports should not
121 have been included in the NOV without identifying the applicable VMC section for each
122 recommendation offered in the expert reports.

123 C. Whether to uphold the decision of the City and local appeals board that the
124 structures located at 2101-2121 Kecoughtan Road must be brought into compliance within 30 days
125 of issuance of the NOV.

126 A10 argued that 30 days from issuance of the NOV was not a sufficient timeframe to
127 complete the needed repairs. A10 further argued that the 30 day timeframe did not provide them
128 the necessary time to reach settlement, closing, and obtain the necessary building permits to
129 begin renovating the property. A10 further argued that they would need at least six (6) months to
130 reach permit issuance. A10 argued that the same consideration offered in a previous Review
131 Board ruling in the Sotos case¹ in 1995 should be extended to A10. The Sotos ruling in part:

- 132 • Required limited repairs to the exterior of the structure to meet code requirements
- 133 • Provided a timeframe of 90 days to complete the exterior repairs
- 134 • Set no requirements for interior code violations
- 135 • Allowed interior rehabilitation efforts to continue with no timeline for completion
- 136 provided the exterior of the building was and remained secure from the public

137
138 The City argued that 30 days was the normal timeline offered by the City. The City also
139 argued that A10 had conveyed to the City that they were not planning to make any repairs, rather
140 securing the structures from the public and moving to auction to sell the property.

¹ Appeal No. 95-9

141 The Review Board found that the structures located at 2101-2121 Kecoughtan Road must
142 be brought into compliance; however, amended the timeline to nine (9) month, from the date of
143 this final order, to have the building permits issued for the entire property, because the allotted
144 time provided by the City was not sufficient to reach settlement, closing, and obtain the necessary
145 building permits to renovate the property.

146 D. Whether to uphold the decision of the City and local appeals board that the
147 structures located at 2101-2121 Kecoughtan Road must be demolished is warranted under VMC
148 Section 106.1 *Unsafe Structure or Structures Unfit for Human Occupancy* and is a proper remedy
149 given the structures are vacant and secure from public entry and must be demolished within 30
150 days of issuance of NOV.

151 A10 argued that demolition of the structures was not warranted because the structures
152 were vacant, secured from the public, and not in danger of partial or complete collapse. A10
153 further argued that their position was affirmed by previous Review Board rulings in the Sotos,
154 Rowson, Pitts, and Jennings cases². A10 also argued that they did not have a history of failure to
155 cooperate. Lastly, A10 argued that, based on the expert reports, the structures were prime
156 candidates for renovation and rehabilitation and that was the right course for the structures.

157 The City argued that VMC Section 106 was an “or” standard and not all three conditions
158 of the standard had to be met to result in a violation. The City further argued that as long as one
159 of the three conditions were met the code official could make the determination to raze and
160 remove the structure even if the structure was vacant and secure. The City further argued that
161 lacking all three conditions did not preclude the city from ordering demolition, which it is
162 authorized to do under VMC Section 106. The City argued that the condition of VMC Section

² Appeal Nos. 95-9, 15-17, 00-17, and 11-11

163 106 that applies was the danger to life, safety, and welfare of the occupants of the structure or the
164 public. The City also argued that due to the owner's lack of cooperation with the code official,
165 long history of non-compliance, inability to achieve compliance with the USBC, and the
166 potential buyer's lack of demonstration that the necessary financial mechanisms were in place to
167 facilitate the completion of the project, demolition was appropriate, which was also the ruling of
168 the Review Board in the Pitts case. The City argued that this was the exact situation that
169 currently existed as neither Colonial Landing Apartment, A10 Capital LLC, nor KRS Holdings
170 have complied. Lastly, the City argued that the condition of the structures was beyond the scope
171 of reasonable repair and warranted demolition.

172 The Review Board found that the structures located at 2101-2121 Kecoughtan Road must
173 be demolished is warranted under VMC Section 106.1 *Unsafe Structure or Structures Unfit for*
174 *Human Occupancy* and is a proper remedy; therefore, if, within nine (9) months, from the date of
175 this final order, the building permits for the entire property are not issued the structures must be
176 demolished.

177 IV. Conclusion

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

180 A. Whether to uphold the decision of the City and the local appeals board that the
181 structures located at 2101-2121 Kecoughtan Road are unsafe structures or structures unfit for
182 human occupancy in accordance with VMC Section 106.1 *Unsafe Structure or Structures Unfit*
183 *for Human Occupancy.*

184 The decision of the City and local appeals board that the structures located at 2101-2121
185 Kecoughtan Road are unsafe structures or structures unfit for human occupancy in accordance
186 with VMC Section 106.1 *Unsafe Structure or Structures Unfit for Human Occupancy*, is upheld,

187 because of the overwhelming amount of evidence provided in the record showing the unsafe
188 condition of the structures on the property.

189 B. Whether to uphold the decision of the City and the local appeals board that the
190 structures located at 2101-2121 Kecoughtan Road must comply with all recommendations of the
191 four A10 expert reports (MISH Engineering Concepts, PLC dated January 31, 2024, Complete
192 Care Plumbing LLC dated January 26, 2024, S&W Power Solutions, LLC received January 31,
193 2024, and Partner Engineering and Science, INC. dated January 31, 2024).

194 The decision of the City and local appeals board that the structures located at 2101-2121
195 Kecoughtan Road must comply with all recommendations of the four A10 expert reports (MISH
196 Engineering Concepts, PLC dated January 31, 2024, Complete Care Plumbing LLC dated January
197 26, 2024, S&W Power Solutions, LLC received January 31, 2024, and Partner Engineering and
198 Science, INC. dated January 31, 2024), is overturned, because the recommendations listed in the
199 expert reports should not have been included in the NOV without identifying the applicable VMC
200 section for each recommendation offered in the expert reports.

201 C. Whether to uphold the decision of the City and local appeals board that the
202 structures located at 2101-2121 Kecoughtan Road must be brought into compliance within 30 days
203 of issuance of the NOV.

204 **The decision of the City and local appeals board that the structures located at 2101-2121
205 Kecoughtan Road must be brought into compliance, is upheld; however, the Review Board amends
206 the timeline to twelve (12) months, from the date of this final order, to have the building permits
207 issued for the entire property, because the allotted time provided by the City was not sufficient to
208 reach settlement, closing, and obtain the necessary building permits to renovate the property.**

209 D. Whether to uphold the decision of the City and local appeals board that the
210 structures located at 2101-2121 Kecoughtan Road must be demolished is warranted under VMC

211 Section 106.1 Unsafe Structure or Structures Unfit for Human Occupancy and is a proper remedy
212 given the structures are vacant and secure from public entry and must be demolished within 30
213 days of issuance of NOV.

214 **The decision of the City and local appeals board requiring that the structures located at
215 2101-2121 Kecoughtan Road may be demolished is warranted under VMC Section 106.1 Unsafe
216 Structure or Structures Unfit for Human Occupancy and is a proper remedy if, within twelve (12)
217 months from the date of this final order, the building permits for the entire property are not
218 issued.**

219

220

221

Chair, State Building Code Technical Review Board

222

223

224 Date entered _____November 1, 2024_____

225

226

227

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