

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Fairfax County
Appeal No. 23-03

DECISION OF THE REVIEW BOARD

I. Procedural Background

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

II. Case History

On April 11, 2023, the Fairfax County Department of Code Compliance (County), the agency responsible for the enforcement of the 2018 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC)¹, denied the request for a temporary certificate of occupancy for the residential structure, located at 7108 Centerville Road, in Fairfax County, owned by Lewis Washington (Washington).

Washington filed a timely appeal to the Fairfax County Board of Building Code Appeals (local appeals board). The first local appeals board hearing was held on May 10, 2023 where the local appeals board deferred action on the appeal. A second local appeals board hearing was held

¹ The staff document initially referenced the Virginia Maintenance Code (VMC) which was the scrivener's error and should have referenced the Virginia Construction Code (VCC). Attached to this decision is a copy of the amended staff document.

on June 14, 2023 and the local appeals board approved the appeal. The County further appealed to the Review Board on July 6, 2023.

Appearing at the Review Board meeting for Fairfax County were Dan Willham, Kyle Kratzer, and Patrick Foltz. Appearing for Washington were Lewis Washington and Justin Criner.

III. Findings of the Review Board

A. Whether to uphold the county and overturn the local appeals board that a temporary certificate of occupancy should not be issued.

The County, through legal counsel, argued that when the request for temporary certificate of occupancy to occupy a portion of the residential structure was submitted the residential structure was unfinished and several safety code violations existed; thus, the structure was unsafe for occupancy. The County further argued that there were several site condition violations related to grading, seeding, driveway installation, and a retaining wall which contributed to the denial of the request for temporary certificate of occupancy. The County also argued that the County may grant a temporary certificate of occupancy in accordance with VCC Section 116.1.1; however, is not required to do so. The County further argued that it is required to determine whether a property is in compliance with “*any other pertinent laws and ordinances*” in accordance with VCC Section 116.1, which includes the site conditions of the property regulated by the county zoning department, prior to the issuance of a certificate of occupancy. Additionally, the County argued that a temporary certificate of occupancy had never been issued in Fairfax County for a single-family dwelling in accordance with VCC Section 116, allowing occupants to live in a single-family dwelling or part(s) thereof prior to the issuance of the final certificate of occupancy.

The County argued that the appeal before the Review Board was for the decision made by the County related to the Washington’s submittal for a temporary certificate of occupancy in

April 2023. The County further argued that the newly presented residential structure and site conditions provided in the record occurred after the appeal was filed to the local appeals board and were not part of the appeal before the Review Board.

The County also argued that the local appeals board erred in continuing the local appeals board hearing in May 2023 to a subsequent meeting to allow Washington time to abate cited violations and make the property better suited for approval of his request for a temporary certificate of occupancy. The County further argued that the local appeals board allowed the work performed on the new residential structure and site, which occurred well after the appeal was submitted in April 2023, to be presented at the second local appeals board hearing held in June 2023 and considered the new conditions in its decision. The County argued that the local appeals board has neither the authority to allow more time for Washington to work on his property to abate violations nor the authority to take additional evidence which occurred after the appeal was filed in April 2023. The County further argued that the local appeals board should have limited their consideration to the facts, circumstances, and conditions of the property at the time the request for temporary certificate of occupancy was submitted for which the appeal was filed in April 2023. Lastly, the County argued that the review of a code official's decision by the local appeals board should be limited to the information the code official reviewed when making their decision and not be open to new information that was not considered by the code official in their decision.

Washington, through legal counsel Justin Criner, argued that he applied for the temporary certificate of occupancy for 75 days to complete construction of his home. Washington further argued that when the request for a temporary certificate of occupancy was submitted in April 2023, the part of the structure he requested to occupy was safe for occupancy. Washington argued that he needed the temporary certificate of occupancy to provide it to the bank in order to

access the needed funds to finish construction of his home. Washington also argued that the denial of a temporary certificate of occupancy by the County, simply because the County does not issue temporary certificates of occupancy for single-family dwellings, was contrary to VCC Section 116.1.1.

Washington argued that under VCC Section 119.7, the local appeals board had the authority to modify the decision of the County. Washington further argued that the local appeals board had the authority to consider new evidence and render a decision on that evidence. Washington further argued that all cited violations to the structure had been abated, the structure was complete, and the final inspection had been performed. He also argued that the only remaining issues on the property were related to the site conditions. Lastly, Washington argued that he had secured the County required separation permit for the unfinished portions of his home which were the theater room and second story brick veneer to clear the way for the temporary certificate of occupancy to be approved by the County.

The Review Board found that the local appeals board erred in its decision because they did not consider the actual conditions of the residential structure and site at the time the appeal was filed in April 2023; therefore, did not have sufficient evidence to make the decision that they made.

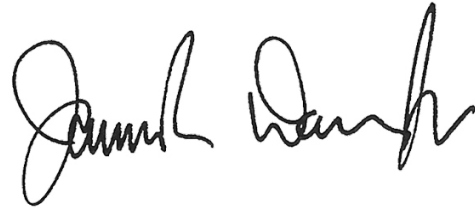
IV. Final Order

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

- A. Whether to uphold the county and overturn the local appeals board that a temporary certificate of occupancy should not be issued.

The decision of the County is upheld and the decision of the local appeals board is overturned because the local appeals board did not consider the actual conditions of the residential structure and site at the time the appeal was filed in April 2023; therefore, did not have sufficient

evidence to make the decision they made. The appeal is remanded back to the local appeals board to re-hear the case.



Chair, State Building Code Technical Review Board

Date entered _____ November 17, 2023 _____

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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REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1. On April 11, 2023, the Fairfax County Department of Code Compliance (County), the agency responsible for the enforcement of the 2018 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), denied the request for a temporary certification of occupancy for the residential structure, located at 7108 Centerville Road, in Fairfax County, owned by Lewis Washington (Washington).

2. Washington filed an appeal to the Fairfax County Board of Building Code Appeals (local appeals board). The first local appeals board hearing was held on May 10, 2023 where the local appeals board deferred action on the appeal. A second local appeals board hearing was held on June 14, 2023 and the local appeals board, with the Chair casting the deciding vote, approved the appeal and directed the County to issue a temporary certificate of occupancy with a 75-day deadline.

3. The County further appealed to the Review Board on July 6, 2023.

4. 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 appeal hearing before the Review Board.

Suggested Preliminary Issues for Resolution by the Review Board

B. Whether to uphold the county and overturn the local appeals board that a temporary certificate of occupancy should not be issued.