

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Craig Caron (Chris Jánosky, Esq.)  
Appeal No. 23-10

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 September 5, 2023, the Franklin County Development Services Department of Building Inspections (County), the agency responsible for the enforcement of Part 1 of the 2018 Virginia Uniform Statewide Building Code (VUSBC), issued several Notices of Violation (NOV) to Craig Caron dba/ Craig Caron Builders (Caron) for a residential structure located at 197 Compass Cove in Franklin County, which is owned by Robert and Lisa Gearhart (Gearhart).

The certificate of occupancy (CO) was issued on November 10, 2022. Two of the NOV's were issued on September 5, 2023 citing the following potential violations:

- a. *Violation: Exterior Concrete Lap siding is not installed in accordance with manufacturer installation instructions. This installation voids the warranty and is likely to cause further issues.*
  - i. *Applicable Code Section: 2018 Virginia Residential Code-Section R703.10.2 Fiber Cement Lap Siding. It requires that the siding be installed according to the approved manufacturer's installation instructions.*



Appearing at the Review Board meeting for Caron was Craig Caron and his legal counsel, Chris Jánszky. Appearing at the Review Board meeting for the County was John Broughton and his legal counsel, Chris Dadak. Appearing for Gearhart were property owners Lisa and Robert Gearhart.

### III. Findings of the Review Board

#### A. Whether to overturn the decision of the County and the local appeals board that there is a violation of R703.10.2 Fiber Cement Lap Siding.

Caron, through legal counsel, argued that the appeal was time barred by the statute of limitations outlined in §36-106. Caron further argued that R703.10.2 only applied to the fiber cement siding fastener heads and further did not require the installation of fiber cement siding to comply with the manufacturer's installation instructions. Caron also argued that the deviations from the manufacturer installation instructions were requested and approved by Gearhart related to the concealment of the nail heads and the trimming of the edges of the fiber cement siding around windows.

The County, through legal counsel, argued that the appeal was not time barred because discovery by the County of the cited violations listed in the NOV was March 2023, which was within the two-year requirement in the code. The County also argued that the structure of the VUSBC provides a clear path for a code official to utilize the code and/or the manufacturer's installation instructions when enforcing compliance with the installation of a designed/engineered product, and further specifies to enforce the most restrictive provisions.

Gearhart argued that the fiber cement siding was warped, and caulking was visible in many areas. Gearhart further argued that there were joints in the fiber cement siding above the windows which was not in accordance with the manufacturer's installation instructions. Gearhart

also argued that they never requested or approved any deviations from the manufacturer's installation instructions.

The County, through legal counsel, and Gearhart, at different points in their individual testimonies, argued that two different types of fiber cement siding were installed and that, pursuant to the manufacturer, one of the fiber cement siding types installed was not for the correct climate zone for the area where the structure was located. The County and Gearhart also argued the installation of the fiber cement siding, specifically caulking, flashing, nailing of the fiber cement siding, trimming of the fiber cement siding edges, location of fiber cement siding joints, concealment of nail heads, attachment of the fiber cement siding, and minimum lapping of the fiber cement siding were not performed in accordance with the manufacturer's installation instructions.

The Review Board found that the fiber cement siding was not installed in accordance with the manufacturer's installation instructions as cited by the County and upheld by the local appeals board based on the evidence in the record, specifically the report dated October 16, 2023 from HBS Consulting, LLC, and the testimony provided during the hearing. The Board also found that the matter was not time barred as the discovery by the County of the cited violations listed in the NOV was March 2023, which was within the two-year requirement in the code.

Additionally, the Board further found that the County needed to modify the NOV and cite VUSBC Section 112.3 *Documentation and approval* in the Applicable Code Section portion of the NOV which provides clarity for the use and enforcement of the manufacturer's installation instructions.

B. Whether to uphold the decision of the County and the local appeals board that there is a violation of R506 Concrete Floors (On Ground).

Caron, through legal counsel, argued that the appeal was time barred by the statute of limitations outlined in §36-106. Caron argued that at the time of construction 4” forms were installed, and the pre-slab inspection was performed and passed for the basement garage/workshop concrete floor. Caron also argued that proper testing had not been performed by the County on the basement garage/workshop concrete floor. Lastly Caron argued that the County had provided no proof that the violation existed.

The County, through legal counsel, argued that the appeal was not time barred because discovery by the County of the cited violations listed in the NOV was March 2023, which was within the two-year requirement in the code.

The County, through legal counsel, and Gearhart, at different points in their individual testimonies, argued that sometime after the issuance of the CO a crack exceeding 20’+ in length and approximately ½” wide opened in the basement garage/workshop concrete floor. The County and Gearhart further argued that the crack provided an opportunity for measurement of the depth of the basement garage/workshop concrete floor. The County and Gearhart further argued that the measurements taken along the 20’+ crack of the basement garage/workshop concrete floor indicated the basement garage/workshop concrete floor slab thickness was less than the required 3.5” thickness.

The Review Board found that the basement garage/workshop floor cracked, materially more significantly than a natural hairline crack and the slab was consistently less than the required 3.5” thickness as cited by the County and upheld by the local appeals board. The Review Board based this off the photographic evidence in the record coupled with the testimony provided during the hearing. The Board also found that the matter was not time barred as the discovery by the County of the cited violations listed in the NOV was March 2023, which was within the two-year requirement in the code.

Additionally, the Board found that the local appeals board erred in providing amendments in the Corrective Action section of the final decision as the role of the local appeals board in building code appeals is to determine whether a violation exists, not how to correct the violation.

#### 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 overturn the decision of the County and the local appeals board that there is a violation of R703.10.2 Fiber Cement Lap Siding.

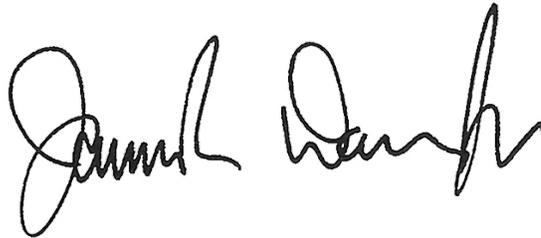
The decision of the County and local appeals board that the fiber cement siding was not installed in accordance with the manufacturer's installation instructions, is upheld, because, pursuant to the manufacturer, some of the fiber cement siding installed was not for the correct climate zone where the structure is located, and the installation of the fiber cement siding, specifically the caulking, flashing, nailing of the fiber cement siding, trimming of the fiber cement siding edges, butt joint spacing and splicing, concealment of nail heads, attachment of the fiber cement siding, and minimum lapping of the fiber cement siding, was not performed in accordance with the manufacturer's installation instructions based on the evidence provided in the record, specifically the report dated October 16, 2023 from HBS Consulting, LLC, and the testimony provided during the hearing.

B. Whether to uphold the decision of the County and the local appeals board that there is a violation of R506 Concrete Floors (On Ground).

The decision of the County and local appeals board that the basement garage/workshop concrete floor cracked, materially more significantly than a natural hairline crack and the concrete slab was consistently less than the required 3.5" thickness as cited by the County, is upheld,

because evidence provided showed a 20'+ crack in the basement garage/workshop concrete floor, which was a hairline crack at the issuance of the CO but had cracked materially more significant than a natural hair-line crack since issuance of the CO, where multiple measurements with a tape measure were taken which indicated the basement garage/workshop concrete floor was less than the required 3.5" thickness based on the photographic evidence provided in the record coupled with the testimony provided at the hearing.

Additionally, the local appeals board amendments, in the Corrective Action section of the final decision, are overturned, because the local appeals board erred in providing amendments in the Corrective Action section of the final decision, as the decision of the local appeals board is to determine whether a violation exists, not how to correct violations that exist.



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Chair, State Building Code Technical Review Board

Date entered \_\_\_\_\_April 19, 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.