

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD
[Preliminary Hearing for Timeliness]

IN RE: Appeal of Brittion Hall LLC
 Appeal No. 24-07

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 November 13, 2023, and March 7, 2024 the Town of Warrenton Department of Community Development (Town), the agency responsible for the enforcement of Part III of the 2018 Virginia Uniform Statewide Building Code (VUSBC or VMC), issued Notices of Violation (NOV) to Michael K. and Etsudo K. Macdonald (Macdonald), for the structure located at 45 Winchester Street in the Town of Warrenton, citing the following VMC Sections on the specified dates of the NOVs:

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

- 304.6 Exterior walls (November 13, 2023; March 7, 2024)
- 304.7 Roofs and drainage (November 13, 2023; March 7, 2024)
- 304.8 Decorative features (November 13, 2023; March 7, 2024)
- 304.9 Overhang extensions (November 13, 2023; March 7, 2024)
- 304.13 Window, skylight, and door frames (November 13, 2023; March 7, 2024)
- 304.13.1 Glazing (November 13, 2023; March 7, 2024)
- 304.13.2 Openable windows (November 13, 2023; March 7, 2024)
- 304.15 Doors (November 13, 2023; March 7, 2024)
- 305.4 Stairs and walking surfaces (March 7, 2024)

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

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

III. Findings of the Review Board

A. Whether the appeal was untimely.

Macdonald argued that his Brittion Hall LLC appeal was identical to his Hotel Street LLC¹ (attached for reference) with the only difference being the property address. Macdonald argued that the Town did not submit the signed receipt for the certified mailing for the record of the appeal. Macdonald further argued that his wife signed the certified mail receipt. Macdonald argued that he knew what the local appeals board decision was the day after the meeting. Macdonald argued that the Town was required to serve him². Macdonald also argued that the previous building official deemed the building safe and habitable. Macdonald appeared to concede that the appeal was indeed untimely.

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

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

¹ Hotel Street LLC (Appeal No. 24-06)

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

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

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

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

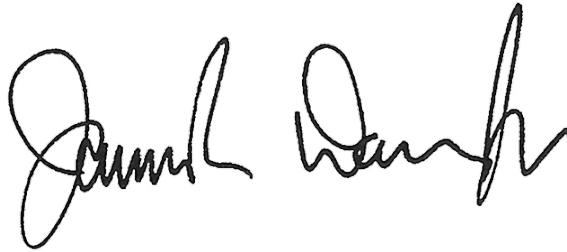
The Review Board found that Macdonald's appeal was untimely based on the facts provided in the record that the Town sent the written decision of the local appeals board certified mail on April 2, 2024, Macdonald had knowledge and receipt of the local appeals board decision on April 30, 2024, and certified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

IV. Conclusion

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

- A. Whether the appeal was untimely.

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



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.

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD
[Preliminary Hearing for Timeliness]

IN RE: Appeal of Hotel Street LLC
 Appeal No. 24-06

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

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

- 304.2 *Protective treatment* (June 24, 2021; December 8, 2023; March 6, 2024)
- 304.4 *Structural members* (June 24, 2021; March 6, 2024)
- 304.6 *Exterior walls* (June 24, 2021; December 8, 2023; March 6, 2024)
- 304.7 *Roofs and drainage* (June 24, 2021; December 8, 2023; March 6, 2024)
- 304.8 *Decorative features* (June 24, 2021; December 8, 2023; March 6, 2024)
- 304.9 *Overhang extensions* (June 24, 2021; March 6, 2024)
- 304.13 *Window, skylight, and door frames* (June 24, 2021; December 8, 2023; March 6, 2024)
- 304.13.1 *Glazing* (June 24, 2021; December 8, 2023; March 6, 2024)
- 304.13.2 *Openable windows* (June 24, 2021; December 8, 2023; March 6, 2024)
- 304.15 *Doors* (June 24, 2021; December 8, 2023; March 6, 2024)
- 305.1 *General* (June 24, 2021)
- 305.2 *Structural members* (June 24, 2021)
- 305.3 *Interior surfaces* (June 24, 2021)
- 305.6 *Interior doors* (June 24, 2021)
- 605.1. *Electrical components* (December 8, 2023; March 6, 2024)

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

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

III. Findings of the Review Board

A. Whether the appeal was untimely.

Macdonald argued that the Town issued the first NOV in November of 2023. Macdonald also argued that the Town did not hold a local appeals board meeting in November, December, January, or February. Macdonald argued that he had a headache and did not want to attend the local appeals board meeting on March 27, 2024, which he conveyed to the Town on the day of the meeting. Macdonald further argued that the Town proceeded to hold the meeting as scheduled in his absence. Macdonald also argued that the Town attempted to serve¹ him and that he was out of the country for three months and was never served. Macdonald argued that he never received a copy of the local appeals board decision; however, his wife did and emailed a copy to him. Macdonald further argued that the Town did not send notice to his attorney. Macdonald argued that his building floods. Macdonald also argued that the previous building official deemed the building safe and habitable.

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

¹ Macdonald offered no specifics or clarification as to what the Town attempted to serve.

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

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

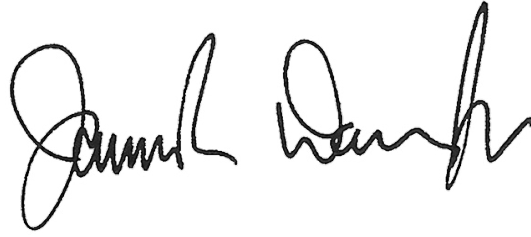
The Review Board found that Macdonald's appeal was untimely based on the facts provided in the record that the Town sent the written decision of the local appeals board certified mail on April 2, 2024, Macdonald had knowledge and receipt of the local appeals board decision on April 30, 2024, and certified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

IV. Conclusion

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

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Chair, State Building Code Technical Review Board

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