

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

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

Susan Frazier (Frazier) filed an appeal to the Fairfax County Board of Building Code Appeals (local appeals board). On February 14, 2024, the local appeals board upheld two decisions and overturned one decision of the code official. Frazier attempted to further appeal to the Review Board; however, Frazier never submitted a completed application for appeal or copy of the code official’s decision being appealed. Due to the lack of submittal of a completed application for appeal and copy of the enforcement decision of the code official, Review Board staff (Staff) processed the limited information that had been submitted and scheduled a preliminary hearing for the Review Board to determine completeness of the application and timeliness; the County, in its initial submittal, challenged the timeliness of the appeal.

Staff provides the following timeline and details of requests for submittals by staff to Frazier.

- March 8, 2024, Frazier attempted to send an email to 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. The SBCO team member charged with monitoring the SBCO general inbox forwarded Frazier’s email to staff on Friday March 8, 2024. Frazier’s email provided notice that she intended to appeal a decision of the Fairfax County Board of Building Code Appeals (local appeals board) received February 20, 2024. No application or supporting documents were attached to the email.
- Monday March 11, 2024 Staff responded to Frazier and informed Frazier she could submit her application directly to staff at the email address from which she was receiving the message. Frazier’s initial appeals application, local appeals board resolution, and statement of relief sought were emailed to Review Board staff on Monday March 11, 2024.
- March 12, 2024 Staff acknowledged receipt of the appeals application, local appeals board resolution, and statement of relief sought. After review of Frazier’s submittal that same day, 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.”*
    - *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.*

- *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.”*

- March 13, 2024, Frazier responded acknowledging receipt of staff’s email dated March 12, 2024.
- March 20, 2024, staff followed up with Frazier because the requisite documentation and/or information had not been submitted. Frazier responded the same day, 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.

- April 29, 2024, staff followed up again with Frazier because the requisite documentation and/or information still had not submitted.
- May 1, 2024, Frazier acknowledged staff's email dated April 29, 2024 and indicated she was still working on her submittal.
- June 16, 2024, 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 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.”*
- July 16, 2024, Frazier requested another copy of the appeals application. Staff provided Frazier a copy of the application that same day. Frazier acknowledged receipt the same day. Staff received no submittals from Frazier by the required deadline of July 17, 2024. Staff processed the appeal with the limited information that had been submitted by Frazier.
- July 18, 2024, Frazier requested until July 21, 2024 to submit the requisite documentation and/or information. Staff denied Frazier's request.

Appearing at the Review Board meeting for Frazier was Sherry Frazier, Frazier's sister, who testified under oath that she possessed power of attorney (POA) for Frazier. Appearing at the Review Board meeting for the County was Attorney Patrick Foltz.

### III. Findings of the Review Board

A. Whether the appeal was untimely.

B. Whether the application for appeal to the Review Board is complete.

Frazier argued that the appeal application was timely. Frazier further argued that she attempted to submit a copy of the enforcement decision of the code official.

The County argued that Frazier's appeal application filed on March 11, 2024, shown on page 47 of the record, was timely filed; however, a copy of the enforcement decision of the code official must be submitted along with the appeals application and must be submitted with 21 calendar days of receipt of the decision being appealed. The County further argued that Frazier never submitted a copy of the enforcement decision of the code official; therefore, Frazier's appeal application was incomplete and untimely; therefore, the appeal should be dismissed.

The County also argued that Frazier's statement of relief sought was insufficient as it does not identify an error made by the code official or the local appeals board. The County further argued that Frazier, neither in the record of the appeal nor in her verbal testimony at the hearing, challenged the local appeals board decision. Lastly, the County argued as to whether Sherry Frazier could file the appeal application and appear before the Review Board to argue for Frazier without providing a copy of a POA which had been requested by the County and the Review Board.

The Review Board found that Frazier's appeal was timely because an application for appeal and statement of relief sought were received within the required time frame. The Review Board also found that the appeal was not properly before the Board because the application, though received within the required time frame, was incomplete because a copy of the enforcement decision of the code official was not provided with the application as required by VPMC 107.8.

#### IV. Conclusion

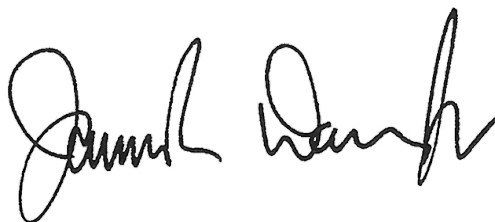
The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:

A. Whether the appeal was untimely.

Frazier's appeal was timely because an application for appeal and statement of relief sought were received within the required time frame.

B. Whether the application for appeal to the Review Board is complete.

Frazier's appeal was not properly before the Board because the application, though received within the required time frame, was incomplete because a copy of the enforcement decision of the code official was not provided with the application as required by VPMC 107.8.



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Chair, State Building Code Technical Review Board

Date entered \_\_\_\_\_ November 15, 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.