

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, May 17, 2019 - 10:00am

Virginia Housing Center
4224 Cox Road Glen Allen, Virginia

- I. Roll Call **(TAB 1)**
- II. Approval of March 15, 2019 Minutes **(TAB 2)**
- III. Approval of Final Order **(TAB 3)**
In Re: Appeal of Greg Wooldridge (ODU)
Appeal No 18-17
- IV. Approval of Final Order **(TAB 4)**
In Re: Appeal of Raymond M. Parker
Appeal No. 18-20
- V. Approval of Continuance Order **(TAB 5)**
In Re: Appeal of Karen Hobbs
Appeal No. 18-21
- VI. Approval of Decision for Reconsideration **(TAB 6)**
In Re: Appeal of AMcL, LLC
Appeal No. 18-14
- VII. Action Requests **(TAB 7)**
In Re: AMcL, LLC Appeal No. 18-14
- VIII. Public Comment
- IX. Appeal Hearing **(TAB 8)**
In Re: Karen Hobbs
Appeal No 18-21
- X. Appeal Hearing **(TAB 9)**
In Re: Eagle Properties and Investments LLC
Appeal No 18-15
- XI. Appeal Hearing **(TAB 10)**
In Re: Eagle Properties and Investments LLC
Appeal No 18-19
- XII. Interpretation **(TAB 11)**
In Re: Utilities Exemption
- XIII. Secretary's Report

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STATE BUILDING CODE TECHNICAL REVIEW BOARD

James R. Dawson, Chairman
(Virginia Fire Chiefs Association)

W. Shaun Pharr, Esq., Vice-Chairman
(The Apartment and Office Building Association of Metropolitan Washington)

Vince Butler
(Virginia Home Builders Association)

J. Daniel Crigler
(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

Alan D. Givens
(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

Christina Jackson
(Commonwealth at large)

Joseph A. Kessler, III
(Associated General Contractors)

Eric Mays
(Virginia Building and Code Officials Association)

E.G. “Rudy” Middleton
(Electrical Contractor)

Joanne D. Monday
(Virginia Building Owners and Managers Association)

Patricia S. O’Bannon
(Commonwealth at large)

J. Kenneth Payne, Jr., AIA, LEED AP BD+C
(American Institute of Architects Virginia)

Richard C. Witt
(Virginia Building and Code Officials Association)

Aaron Zdinak, PE
(Virginia Society of Professional Engineers)

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**STATE BUILDING CODE TECHNICAL REVIEW BOARD
MEETING MINUTES
March 15, 2019
Chesterfield, Virginia**

Members Present

Mr. James R. Dawson, Chairman
Mr. W. Shaun Pharr, Esq., Vice-Chairman
(arrived after the approval of the final order for
Appeal No. 18-14)
Mr. Vince Butler
Ms. Christina Jackson
Mr. Joseph Kessler
Mr. Eric Mays, PE
Ms. Joanne Monday
Ms. Patricia S. O'Bannon
Mr. J. Kenneth Payne, Jr.
Mr. Richard C. Witt
Mr. Aaron Zdinak, PE (arrived after the
conclusion of public comments)

Members Absent

Mr. Daniel Crigler
Mr. Alan D. Givens
Mr. E. G. Middleton, III

Call to Order The meeting of the State Building Code Technical Review Board ("Review Board") was called to order at approximately 10:00 a.m. by Chairman Dawson.

Roll Call The roll was called by Mr. Luter and a quorum was present. Mr. Justin I. Bell, legal counsel for the Board from the Attorney General's Office, was also present.

Approval of Minutes The draft minutes of the February 15, 2019 meeting in the Review Board members' agenda package were considered. Mr. Witt moved to approve the minutes as presented. The motion was seconded by Ms. Jackson and passed with Messrs. Butler and Kessler as well as Meses. Monday and O'Bannon abstaining.

Final Orders Appeal of Karen Lindsey
Appeal No. 18-07:

After review and consideration of the final order presented in the Review Board members' agenda package, Mr. Mays moved to approve the final order as presented. The motion was seconded by Mr. Payne and passed with Messrs. Butler and Kessler as well as Meses. Monday and O'Bannon abstaining.

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Final Orders
(continued)

Appeal of AMcL LLC
Appeal No. 18-14:

After review and consideration of the final order presented in the Review Board members' agenda package, Mr. Mays moved to approve the final order as presented. The motion was seconded by Mr. Witt and passed with Messrs. Butler and Kessler as well as Mses. Monday and O'Bannon abstaining.

Appeal of Rappahannock County High School
Appeal No. 18-16:

After review and consideration of the final order presented in the Review Board members' agenda package, Mr. Witt moved to approve the final order as presented. The motion was seconded by Mr. Mays and passed with Messrs. Pharr, Butler and Kessler as well as Mses. Monday and O'Bannon abstaining.

Public Comment

Chairman Dawson opened the meeting for public comment. Mr. Luter advised that Michael Morrissey had signed up to speak. At the conclusion of Michael Morrissey's comments, and with no one else coming forward, Chairman Dawson closed the public comment period.

New Business

Appeal of Greg Wooldridge (ODU); Appeal No. 18-17:

Mr. Payne recused himself from this hearing because his employer does work for Old Dominion University (ODU) and left the meeting.

A hearing convened with Chairman Dawson serving as the presiding officer. The appeal involved citations under the 2012 Statewide Fire Prevention Code related to the property owned by ODU located at 4701 (Units A – N) and 4601 (Units AA – NN) Powhatan Avenue in the City of Norfolk.

The following persons were sworn in and given an opportunity to present testimony:

Greg Wooldridge, ODU
Jared Hoernig, ODU
Billy Hux, State Fire Marshal's Office (SFMO)
Brian McGraw, State Fire Marshal

Also present was:

Catherina F. Hutchins, Esq., OAG counsel for the SFMO

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New Business
(continued)

After testimony concluded, Chairman Dawson closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Greg Wooldridge (ODU); Appeal No. 18-17:

After deliberations, Mr. Witt moved to refer the appeal to the Virginia Department of General Services, Division of Engineering and Buildings for a determination as to whether the smoke detectors currently installed are in compliance with the retrofit provision of the 2012 Virginia Rehabilitation Code Section 1701.2. The motion was seconded by Ms. O'Bannon. The motion passed unanimously.

Appeal of Raymond M. Parker Sr.; Appeal No. 18-20:

A hearing convened with Chairman Dawson serving as the presiding officer. The appeal involved the issuance of the a certificate of occupancy under the 2012 Virginia Construction Code related to the property owned by David Stokes located at 531 LaGrange Industrial Drive in Essex County.

The following persons were sworn in and given an opportunity to present testimony:

Alwyn W. Davis Jr., Essex County Building Official
David Stokes, Owner of the property
Jeffrey Howeth, P. E. , on behalf of Mr. Parker

Also present was:

Chris Mackenzie, Esq., legal counsel for Essex County

Mr. Luter informed the Review Board members that Mr. Raymond M. Parker Sr. had been properly notified of the hearing; however, he was not in attendance.

After testimony concluded, Chairman Dawson closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be

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New Business
(continued)

distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Raymond M. Parker Sr.; Appeal No. 18-20:

After deliberations, Mr. Witt moved to dismiss the appeal as not properly before the Board and it was not properly before the local appeals board because Mr. Parker is not an aggrieved party. The motion was seconded by Mr. Butler. The motion passed with Messrs. Zdinak, Payne, and Pharr voting in opposition.

Appeal of Karen Hobbs; Appeal No. 18-21:

A hearing convened with Chairman Dawson serving as the presiding officer. The appeal involved citations under the 2012 Virginia Maintenance Code related to the property owned by Karen Hobbs located at 11812 Breton Court Unit 2 in Fairfax County.

The following persons were sworn in and given an opportunity to present testimony:

Karen Hobbs, Owner
Catherine Lunsford, Fairfax County Investigator
C. P. Fitzhugh, Fairfax County Property Maintenance Appeals
Coordinator
Jessica McLemore, Animal Control Officer, Fairfax County
Police Department

Also present was:

Douglas Crockett, Esq., legal counsel for Karen Hobbs
Marc Gori, Esq., legal counsel for Fairfax County

After testimony concluded, Chairman Dawson closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Karen Hobbs; Appeal No. 18-21:

After deliberations, Mr. Witt moved to continue the case with the condition that Fairfax County be allowed to perform an inspection of

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New Business
(continued)

the property. The motion was seconded by Ms. O'Bannon. Mr. Witt later withdrew his motion.

After further deliberation Ms. Monday moved to continue the case to the May 17, 2019 meeting. The motion was seconded by Mr. Pharr and passed unanimously.

The Review Board directed the secretary to seek and accept final submittals from both parties of the appeal pursuant to the following submittal schedule:

- Appellant final submittal deadline to be April 12, 2019
- Appellee final submittal deadline to be April 26, 2019

The Review Board further directed the secretary to add the final submittals from each party to the record of the appeal presented in the March 15, 2019 agenda package; thus creating the record of the appeal for the May 17, 2019 meeting.

Interpretation Request

An interpretation request from Powhatan County Building Department was considered concerning the 2015 Virginia Uniform Statewide Building Code (USBC), on Section 102.3 Exemptions #1 and #2 concerning whether or not utility companies are regulated pertaining to solar farms. The Review Board decided not to directly answer the request for interpretation from Powhatan County at this time.

The State Building Codes Office Director, Jeff Brown, informed the Review Board that his office had received multiple inquires related to solar farms similar to that of Powhatan County and that he had conducted extensive research on the topic, some of which he shared with the Review Board.

After discussion, the Review Board directed staff to further research the topic and develop a formal opinion. The Review Board also directed staff to bring their research and formal opinion, along with a better formulated request for interpretation to address the issue of solar farms, back to the Review Board at a subsequent meeting.

After further discussion, Mr. Witt moved to direct staff to draft an interpretation recommendation, to the better formulated a request for interpretation staff was directed to draft, specifying that electric companies regulated by the SCC are exempt from the USBC for solar farm projects on owned or leased land where the electric company has exclusive control of construction and operation of the solar farm. The motion was seconded by Mr. Mays and passed unanimously.

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Request for
Reconsideration

A petition for reconsideration for Appeal No. 18-14 was distributed to the board members. Ms. O'Bannon recused herself from the hearing and exited the meeting.

After discussion, Mr. Witt moved to uphold the original decision of the Board, as outlined in the approved final order, and deny the request for consideration. The motion was seconded by Ms. Jackson and passed with Ms. Monday abstaining from the vote.

Secretary's Report

Mr. Luter provided an update on Mr. Crigler.

Mr. Luter discussed a new date for the Retreat. Review Board directed the secretary to find another date and email the members for consensus.

Mr. Luter provided the Review Board members with a basic overview of the two cases coming before them in the May meeting. Mr. Luter informed the members the May meeting will be at the Virginia Housing Center.

Adjournment

There being no further business, the meeting was adjourned by proper motion at approximately 3:30 p.m.

Approved: May 17, 2019

Chairman, State Building Code Technical Review Board

Secretary, State Building Code Technical Review Board

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Greg Wooldridge, Old Dominion University (ODU)
Appeal No. 18-17

DECISION OF THE REVIEW BOARD

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).

Case History

In September of 2018, a representative of the State Fire Marshal's Office (SFMO) conducted inspections at Old Dominion University (ODU) Powhatan I Apartments and ODU Powhatan II Apartments located at 4701 (Units A-N) and 4601 (units AA – NN) Powhatan Avenue respectively, in the City of Norfolk. ODU Powhatan I & II Apartments are used to house students of ODU.

On September 12, 2018, the SFMO issued Notices of Violation to ODU concerning the 2012 Virginia Statewide Fire Prevention Code (SFPC) Section 102.7 (Inspections for USBC requirements) concerning retrofitting requirements for smoke detectors in sleeping rooms and Section 907.2.11 (Single and multiple station smoke alarms) concerning smoke detectors in the common areas of the suites in excess of 10 years old and needing to be installed in accordance

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with the manufacturer's recommendation. Greg Wooldridge (Wooldridge), representative for ODU, filed an appeal to the Review Board on September 21, 2018.

Review Board staff developed a staff summary of the appeal, distributed it, along with a copy of all documents submitted, to all the parties and scheduled an appeal hearing before the Review Board. The hearing before the Review Board was held on March 15, 2019. Appearing at the Review Board hearing for SMFO were Brian McGraw, Billy Hux and Catherina F. Hutchins, legal counsel for the SFMO from the Office of the Attorney General (OAG). Greg Wooldridge and Jared Hoernig appeared at the hearing for ODU.

Findings of the Review Board

- A. Whether to overturn or uphold the decision of the State Fire Marshal that a violation of the SFPC Section 102.7 (Inspections for USBC requirements) exists in each apartment of ODU Powhatan I & II Apartments.
- B. Whether to overturn or uphold the decision of the SFMO that a violation of SFPC Section 907.2.11 (Single and multiple station smoke alarms) exists in each apartment of ODU Powhatan I & II Apartments.

Wooldridge argued that ODU had a choice whether to install the smoke alarms in the suite common area, or each individual bedroom. The SFMO argued the smoke alarms must be installed in each individual bedroom. The SFMO further argued that the question should have been posed to the Virginia Department of General Services, Division of Engineering and Buildings (VDGS, DEB), Building Official for state owned buildings, prior to Wooldridge filing the appeal to the Review Board. Wooldridge concurred. The parties agreed to have the matter referred to VDGS, DEB for review and determination of compliance.

The Review Board agrees with the SFMO and Wooldridge that the decision of the SFMO should be referred to VDGS, DEB, Building Official for ODU, for review and determination as to

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whether the smoke alarms currently installed are in compliance with the retrofit provisions of the 2012 Virginia Rehabilitation Code Section 1701.2.

Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the SFMO that a violation of SFPC Section 102.7 (Inspections for USBC requirements) and that a violation of SFPC Section 907.2.11 (Single and multiple station smoke alarms) to be, and hereby is, referred to the VDGS, DEB.

Chairman, State Building Code Technical Review Board

Date entered: ___May 17, 2019_____

Certification

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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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Raymond M. Parker Sr.
Appeal No. 18-20

DECISION OF THE REVIEW BOARD

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).

Case History

On July 12, 2018, the Essex County Building Inspections Department (County), in enforcement of the 2012 Virginia Construction Code (VCC), performed a final inspection on one of the buildings on the property located at 531 LaGrange Industrial Drive, owned by David Stokes, and subsequently issued a certification of occupancy (CO).

Mr. Parker filed an appeal to the Essex County Local Board of Appeals (local appeals board) on August 10, 2018 for the issuance of the CO based on assertions that required permits were not issued, proper inspections were not performed, the well on his property was too close to the building being given the CO, and that "any pertinent laws or ordinances" in accordance with VCC Section 116.1 were not properly enforced by the County.

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The local appeals board heard the case on October 16, 2018 and upheld the decision of the Essex County building official. Mr. Parker filed an application for appeal to the Review Board on December 5, 2018 after receipt of the local board's decision.

Review Board staff developed a staff summary of the appeal, distributed it, along with a copy of all documents submitted, to all the parties and scheduled an appeal hearing before the Review Board. The hearing before the Review Board was held on March 15, 2019. Appearing at the Review Board hearing for Essex County were Alwyn Davis, Building Official; David Stokes, owner of the property; and Chris Mackenzie, legal counsel for Essex County. Jeffrey L. Howeth, P.E. appeared at the hearing on behalf of Mr. Parker, who was properly notified; however, did not appear at the hearing.

Findings of the Review Board

A. Whether or not to dismiss Mr. Parker's appeal due to Mr. Parker not being an aggrieved party.¹

Essex County, through legal counsel, argued that Mr. Parker was not an aggrieved party because he does not own any property near the subject property of this appeal. The adjoining properties are owned by corporations partially owned by Mr. Parker. Essex further argued that Mr. Parker was not harmed in a way different from the public because of the issuance of the CO.

Mr. Howeth was unable to provide evidence or testimony related to the arguments presented by Essex County; however, the record of the appeal included written arguments from Mr. Parker. In Mr. Parker's written arguments he expressed his belief that he was aggrieved by the location of his well, which predated the industrial park, in proximity to potential sources of pollution, specifically primary and reserve drain field areas and an infiltration trench and sump which are installed within 100' of the well.

¹ See Review Board Case No. 17-6

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The right to appeal is laid out by statute and by the building code. The Virginia Construction Code reads in part:

119.5 Right of appeal; filing of appeal application. *Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA.*

The Construction Code clearly states that the right of appeal is for applications of the code and being aggrieved by those applications of the code. The Review Board consistently interpreted that the right to appeal is tied to applications of the code and the aggrievement by applications of the code.² In other words, without applications of the code or being aggrieved by applications of the code, there is no right to appeal.

With respect to the issue of whether to dismiss Mr. Parker's appeal due to his lack of standing as an aggrieved party, the Review Board finds that Virginia courts have provided guidance in determining whether a party is aggrieved. In Virginia Supreme Court cases, the court has held that to have standing, a person's rights have to be affected by the disposition of the case and that to be an aggrieved party, the party has direct interest in the subject matter and an immediate, pecuniary and substantial interest, and not a remote or indirect interest. In addition, the court has held that to be aggrieved, there is a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon a party different from that suffered by the public generally.

The Review Board finds that the appeal is not properly before the Board as it was not properly before the local appeals board because Mr. Parker is not an aggrieved by the decision of the building official.

² *Id.*

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Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the appeal to be, and hereby is, dismissed.

Chairman, State Building Code Technical Review Board

Date entered: ___May 17, 2019_____

Certification

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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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Karen Hobbs
Appeal No. 18-21

DECISION OF THE REVIEW BOARD

Continuance Order

At its meeting on March 15, 2019, the Review Board members considered a request for continuance, submitted at the meeting, by Douglas Crockett, counsel for Karen Hobbs, concerning the above referenced matter due to Ms. Hobbs having retained Mr. Crockett three days prior to the hearing. Mr. Crockett expressed that he was unable to properly review the record and prepare for the hearing before the State Building Code Technical Review Board (Review Board) in the time provided by Ms. Hobbs.

After consideration, the Review Board members, through proper motion to continue the appeal, continued the matter to the May 17, 2019 meeting. The Review Board directed staff to seek and accept final submittals from both parties of the appeal pursuant to the following submittal schedule:

- Appellant final submittal deadline to be April 12, 2019
- Appellee final submittal deadline to be April 26, 2019

The Review Board further directed the secretary to add the final submittals from each party to the record of the appeal presented in the March 15, 2019 agenda package.

Chairman, State Building Code Technical Review Board

_____ May 17, 2019 _____
Date entered

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of AMcL, LLC
Appeal No. 18-14

Decision on Petition for Reconsideration

At its meeting on March 15, 2019, the Review Board members considered a Petition for Reconsideration concerning the above referenced matter submitted by Michael Morrissey, agent for AMcL, LLC (AMcL) alleging that his due process rights were violated by not having the opportunity to present and testify at the hearing before the State Building Code Technical Review Board (Review Board) on the merits of the case.

After consideration, the Review Board members, through proper motion to uphold the original decision of the Board as outlined in the approved final order, hereby deny the petition since the County rescinded the cited violation and application of the code, AMcL does not have a right to appeal.

Chairman, State Building Code Technical Review Board

_____ May 17, 2019 _____
Date entered

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: AMcL, LLC. (Michael Morrissey)
Appeal No. 18-14

APPELLANTS' MOTION THAT THE BOARD ENTER AN ORDER TO STATE THE BOARD'S RULINGS THAT WERE NOT INCLUDED IN THE BOARD'S PREVIOUS ORDER

Appellants file this motion asking that the Board enter the following as an Order to document in the case record rulings made by the Board that were not contained in the Board's previous order.

ORDER TO AFFIRM OF RECORD THAT
NO MOTION TO DISMISS BASED ON THE COUNTY'S RECISSION OF ITS NOTICE OF VIOLATION
WAS FILED BY ANY PARTY
and
THE MOTION TO DISMISS AS AN ISSUE WAS INJECTED SOLELY BY THE BOARD'S SECRETARY
And that
CHAIRMAN James Dawson LIMITED APPELLANTS' ARGUMENT WITH A 30-SECOND-TO-FINISH DIRECTIVE
and
ALL ITEMS WERE OBJECTED TO BY APPELLANTS MICHAEL MORRISSEY AND AMCL, LLC

At the hearing on March 15, 2019, Michael Morrissey as appellant (and AMcL, LLC, co-appellant), made a motion at the start of the hearing that the Board's hearing of whether the case should be dismissed based on an October 4, 2018 letter from appellee Henrico County is not properly before the Board. No party, and in particular the appellee Henrico County, had filed such a motion with the Board. Accordingly, Mr. Morrissey moved that the case proceed with hearing the case on its merits, namely, as to whether there was any violation of any of the three building codes at issue in this case.

The Board refused to hear and consider this motion, and proceeded to hear the motion that no party had made to the Board, namely whether the case should be dismissed based on the rescission of the notice of violation, this done by the

County while this case was pending and a hearing date had been set for the hearing of the appeal.

No party, and Henrico County in particular, filed a motion to dismiss this appeal. The Board's action in hearing a motion to dismiss was based solely on the Secretary's listing of this as being an issue on appeal.

Further, the Board's chairman, James Dawson, cut off Mr. Morrissey during his argument by saying he had 30 seconds to finish.

Whereas these rulings were not contained in the order entered from the March 15, 2019 hearing, this order is entered to document these rulings of the Board in (1) denying Mr. Morrissey's motion that disputed the appropriateness of hearing the Board's own-injected motion to dismiss, and (2) in the Board entertaining the motion solely because the Secretary wrote it in as an issue on appeal, and (3) cutting off Mr. Morrissey to 30 seconds left to finish whatever he was saying.

(with the usual sign-off format of the Board to an order)

Respectfully submitted,

_____/s/_____
Michael Morrissey, and

AMcL, LLC

By_____/s/_____
agent

Appellants

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2019 I did send a copy of the above to the appellee to its email address as it appears in the record of the case.

_____/s/_____

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: AMcL, LLC. (Michael Morrissey)
Appeal No. 18-14

APPELLANTS' MOTION THAT THE BOARD ENTER AN ORDER TO STATE THE BOARD'S RULINGS THAT WERE NOT INCLUDED IN THE BOARD'S PREVIOUS ORDER

Appellants file this motion asking that the Board enter the following as an Order to document in the case record rulings made by the Board that were not contained in the Board's previous order.

ORDER TO STATE THE BOARD'S RULING IN ALLOWING LEGAL ARGUMENT ON BEHALF OF THE COUNTY FROM GREGORY REVELS, A LAY WITNESS, EVEN THOUGH THE COUNTY WAS REPRESENTED BY COUNSEL

At the hearing on March 15, 201 in this case, the Board did allow argument on behalf of appellee from a witness for appellee, Gregory Revels. This was even though the case did never get to the point of having any witness testify, and appellee was represented at the hearing by the County Attorney. Co-appellant Michael Morrissey did object to having two people, one being a witness who had not been called to testify, make argument on behalf of appellee, and the Board did not rule on Mr. Morrissey's objection and did allow, without any ruling from the Board, the witness to make legal argument in the case, to which Mr. Morrissey took exception.

(with the usual sign-off format of the Board to an order)

Respectfully submitted,

_____/s/_____
Michael Morrissey, and

AMcL, LLC

By _____/s/_____
agent

Appellants

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2019 I did send a copy of the above to the appellee to its email address as it appears in the record of the case.

_____/s/_____

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: AMcL, LLC. (Michael Morrissey)
Appeal No. 18-14

APPELLANTS' MOTION THAT THE BOARD STATE FOR THE RECORD HOW THE MOTION TO DISMISS CAME BEFORE THE BOARD AND THE BOARD'S RULING TO THE OBJECTION MADE TO THAT MOTION, THESE BEING RELEVANT APPEAL CASE FACTS AND A BOARD ACTION (OR INACTION) NOT INCLUDED IN THE BOARD'S PREVIOUS ORDER

Appellants file this motion asking that the Board enter the following statement to document in the case record facts and a Board action or inaction related to the motion to dismiss, none of which was contained in the Board's previous order.

BOARD'S STATEMENT AS TO HOW THE MOTION TO DISMISS
CAME BEFORE THE BOARD

In response to appellants' motion, the Board states as follows as regards the issues in the appeal heard on March 15, 2019.

A non-lawyer secretary of the board originated a motion to dismiss as an issue notwithstanding the fact that no party had made any such motion. The decision in listing the issues to be heard on appeal in the case was made by the Secretary to the Board. They were not made by any Board member(s) or any attorney. Appellant Mr. Morrissey objected to the issues as written by the Secretary, this being right after those issues were sent out, and he was told by the Secretary to take it up with the Board on the hearing date.

When raised at the start of the hearing, as per the Secretary's instruction, the Board refused to hear Mr. Morrissey's motion that went to the issues to be heard or not heard. Thus the motion was not considered and was not ruled on by the Board when it was made at the outset, at the start of the hearing, on March 15, 2019.

(with the usual sign-off format of the Board)

Respectfully submitted,

_____/s/_____
Michael Morrissey, and

AMcL, LLC

By_____/s/_____
agent

Appellants

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2019 I did send a copy of the above to the appellee to its email address as it appears in the record of the case.

_____/s/_____

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: AMcL, LLC. (Michael Morrissey)
Appeal No. 18-14

APPELLANTS' MOTION THAT THE BOARD STATE FOR THE RECORD HOW THE MOTION TO DISMISS CAME BEFORE THE BOARD AND THE BOARD'S RULING TO THE OBJECTION MADE TO THAT MOTION, THESE BEING RELEVANT APPEAL CASE FACTS AND A BOARD ACTION (OR INACTION) NOT INCLUDED IN THE BOARD'S PREVIOUS ORDER

Appellants file this motion asking that the Board enter the following statement to document in the case record facts and a Board action or inaction related to the motion to dismiss, none of which was contained in the Board's previous order.

BOARD'S STATEMENT AS TO START OF HEARING DELAY ON MARCH 15, 2019

In response to appellants' motion, and because of this being of potential relevance in any further appeal, the Board states as follows as regards the delay in the start of the hearing on March 15, 2019.

The hearing was scheduled for 9:00 a.m. on March 15, 2019. The hearing did not start at that time because all necessary participants for the Board were not there. The assistant attorney general (AAG) Justin Bell did not arrive until 9:25 a.m. and so the hearing did not begin until 9:30 a.m. after Mr. Bell had arrived.

(with the usual sign-off format of the Board)

Respectfully submitted,

_____/s/_____
Michael Morrissey, and

AMcL, LLC

By _____/s/_____
agent

Appellants

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2019 I did send a copy of the above to the appellee to its email address as it appears in the record of the case.

_____/s/_____

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: AMcL, LLC. (Michael Morrissey)
Appeal No. 18-14

NOTICE AS TO REAL PARTIES IN INTEREST IN STYLE OF CASE

The real parties in interest to this case on appeal are Michael Morrissey and AMcL, LLC. This is just as the Board noted in the initial appeal as it listed the party as "AMcL, LLC (Michael Morrissey)." This is also in accordance with the Board's remarks during the hearing as regards the real party in interest. Wherefore, the style of the case and in any further appeal in listing the real parties in interest is: AMcL, LLC and Michael Morrissey, appellants vs. Henrico County, appellee, and this should be so listed in any transfer of the record in further actions in this case.

Respectfully submitted,

_____/s/_____
Michael Morrissey, and

AMcL, LLC
By _____/s/_____
agent

Appellants

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2019 I did send a copy of the above to the appellee to its email address as it appears in the record of the case.

_____/s/_____

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Karen Hobbs
Appeal No. 18-21

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Karen Hobbs
Appeal No. 18-21

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. On October 10, 2018, the County of Fairfax Department of Code Compliance (County), in enforcement of the Virginia Property Maintenance Code (VMC), issued a notice of violation to Karen M. Hobbs for her property located at 11812 Breton Court, Unit 2. The notice cited three VMC violations, one violation each for Sections 305.1 (General), 308.1 (Accumulation of rubbish and garbage), and 702.1 (General). The County also issued a Notice of Structure Unfit of Human Occupancy in accordance with VMC Section 202 (Definition).

2. Ms. Hobbs filed an appeal to the County of Fairfax Board of Building Code Appeals (local board) on October 22, 2018.

3. The local board conducted a hearing in November of 2018 and upheld the decision of the County. Ms. Hobbs filed an application for appeal to the Review Board on December 5, 2018 after receipt of the local board's decision.

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.

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Suggested Issue for Resolution by the Review Board

1. Whether or not to overturn the decision of the County and the local board that a violation of the VMC Section 305.1 (General) exists.
2. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 308.1 (Accumulation of rubbish and garbage) exists.
3. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 702.1 (General) exists.
4. Whether or not to overturn the decision of the County and the local board that in accordance with VMC Section 202 (Definition) the structure is unfit for human occupancy.

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Basic Documents

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County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Maintenance Code

DATE OF ISSUANCE: October 10, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Karen E. Hobbs
ADDRESS: 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

LOCATION OF VIOLATIONS: 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

TAX MAP REF: 0261 19120002B

CASE #: 201806838 **SR #:** 155372

ISSUING INVESTIGATOR: S. C. Lunsford, Ph: (703) 324-4374

POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

CODE § 61-7-1(B): Maintenance Code Violation(s)	First Offense	Each Subsequent Offense
§ VMC 305.1	\$ 100.00	\$ 150.00
§ VMC 308.1	\$ 100.00	\$ 150.00
§ VMC 702.1	\$ 100.00	\$ 150.00
TOTAL:	\$ 300.00	\$ 450.00

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code-2015 Edition), an inspection on October 5, 2018 revealed violations as listed below at the referenced location. The cited violations must be corrected within thirty (30) days from receipt of this notice unless otherwise indicated.

Violation: INTERIOR STRUCTURE GENERAL VMC 305.1. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound, and in a sanitary condition.

Location: 11812 Breton Court, Unit 2, Reston, Virginia- Interior of dwelling unit.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Work to be Performed: Restore interior of dwelling to sanitary condition so as to be in substantial conformance with VMC 305.1.

Violation: ACCUMULATION RUBBISH GARBAGE VMC 308.1. Accumulation of rubbish or garbage. The interior of every structure shall be free from excessive accumulation of rubbish or garbage.

Location: 11812 Breton Court, Unit 2, Reston, Virginia- Interior of dwelling unit.

Work to be Performed: Remove excessive rubbish and garbage from interior of dwelling so as to be in substantial conformance with VMC 308.1.

Violation: MEANS OF EGRESS GENERAL VMC 702.1. A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the International Fire Code.

[F] 1001.1- Building or portions thereof shall be provided with a means of egress system as required by this chapter. The provisions of this chapter shall control the design, construction, and arrangement of means of egress components required to provide an approved means of egress from structures and portions thereof. Sections 1003 through 1029 shall apply to new construction. Section 1030 shall apply to existing buildings.

Exception - Detached one and two family dwelling and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with separate means of egress and their accessory structures shall comply with the International Residential Code.

[R] 311.1 Means of Egress - All dwellings shall be provided with a means of egress as provided in this sections. The means of egress shall provide a continuous and unobstructed path of vertical and horizontal egress from all portions of the dwelling to the exterior of the dwelling at the required egress door without requiring travel through a garage.

Location: 11812 Breton Court, Unit 2, Reston, Virginia- Interior of dwelling unit.

Work to be Performed: Establish unobstructed egress throughout dwelling unit so as to be in substantial conformance with VMC 702.1.

All repairs, alterations, and/or additions must be made in accordance with applicable laws. Any additional violations that may appear as work progresses will require correction.

Information about obtaining any necessary permits required by other Fairfax County agencies may be obtained by calling (703) 222-0801, TTY 711 and requesting the appropriate department.

Per Sect. 107.5 of the Virginia Maintenance Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 14 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

Karen E. Hobbs
October 10, 2018
SR 155372
Page 3

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Secretary to the Fairfax County Local Board of Building Code Appeals
Attention: Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, VA 22035-5504
Telephone: (703) 324-5175, TTY 711

Information and forms can also be obtained at:

<https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>

A follow-up inspection will be made at the expiration of the time period outlined in this Notice.

Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Virginia Maintenance Code which can result in court ordered sanctions or civil penalties. Civil penalties may be ordered in the amount of \$100.00 for each violation cited herein for the first violation and \$150.00 for each subsequent violation cited herein per day totaling up to \$4,000.00 in accordance with Fairfax County Code § 61-7-1(B).

Civil penalties entered by the General District Court shall be paid to the Office of the County Attorney. Investigators may not accept any payments, including those associated with fines and fees.

In accordance with the code, the owner or person to whom this notice of violation has been issued is responsible for contacting me within the time frame established for any re-inspections to assure the violations have been corrected.

If you have any questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703) 324-4374. For any other questions, contact our main office at (703) 324-1300, TTY 711.

LEGAL NOTICE ISSUED BY:



Signature

S. C. Lunsford
Code Compliance Investigator
Ph: (703) 324-4374
catherine.lunsford@fairfaxcounty.gov



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF STRUCTURE UNFIT FOR HUMAN OCCUPANCY

DATE OF ISSUANCE: October 10, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Karen E. Hobbs (Property Owner)
ADDRESS: 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

**LOCATION OF VIOLATION/
SUBJECT PROPERTY:** 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

TAX MAP REF: 0261 19120002B

CASE #: 201806838 **SR#:** 155372

ISSUING INVESTIGATOR: S. C. Lunsford, Ph: (703) 324-4374

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code - 2015 Edition), an inspection of the condominium unit located on the above-referenced subject property was conducted on October 5, 2018. The inspection found that this structure is unfit because of lack of sanitation and obstructed egress on the interior. Therefore, the Fairfax County Maintenance Code Official (Code Official) has deemed this structure to be a Structure Unfit for Human Occupancy, which is defined in Section 202 of the Virginia Maintenance Code as:

STRUCTURE UNFIT FOR HUMAN OCCUPANCY:

An existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-9346
www.fairfaxcounty.gov/code

Karen E. Hobbs
October 10, 2018
SR 155372
Page 2

equipment or (ii) the required plumbing, and sanitary facilities are inoperable.

A Field Notice of Structure Unfit for Human Occupancy was issued to you and/or posted to the subject property on October 5, 2018 because the property condition required immediate attention; and, pursuant to the provisions of Section 106.6 of the Virginia Maintenance Code, a placard stating the following has been posted to the entrance to the structure:

THIS STRUCTURE IS UNFIT FOR HUMAN OCCUPANCY AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL

The subject structure must remain vacant. No person shall enter the structure except upon the authorization of the Code Official for one of the following purposes: (a) to make the required repairs, (b) to demolish the structure, or (c) to make inspections. The placard shall not be removed until the structure is determined by the Code Official as safe to occupy.

You are hereby directed to abate the conditions found at the subject property by complying with the attached Notice of Violation.

Pursuant to Section 106.9 of the Virginia Maintenance Code, the Code Official may authorize emergency repairs to make the structure temporarily safe, whether or not legal action to compel compliance has been instituted. You will be billed if such work is done.

Per Sect. 107.5 of the Virginia Maintenance Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 14 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Secretary to the Fairfax County Local Board of Building Code Appeals
Attention: Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Virginia 22035-5504
Telephone: (703) 324-5175, TTY 711

Information and forms can also be obtained at:
<https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Please give this matter your immediate attention and should you have any questions, please contact me at (703) 324-4374.

Karen E. Hobbs
October 10, 2018
SR 155372
Page 3

LEGAL NOTICE ISSUED BY:



Signature

S. C. Lunsford
Code Compliance Investigator
Ph: (703) 324-4374
catherine.lunsford@fairfaxcounty.gov



Building Code Appeal Request

18 1022.0AP

OCT 22 2018

PROJECT INFORMATION

Project Name: Hunters Woods Village Condominium
 Project Address: 11812 Breton Ct, #2 Reston, VA 20191
 Permit or case number: 201806838 201806838 Tax map number: _____

APPLICANT INFORMATION

Applicant Name: Karen Hobbs Owner Owner's agent
 Address: 11812 Breton Ct #2
 City: Reston VA State: VA ZIP: 20191
 Phone: 703 608-2605 Email: Keh357@aol.com

OWNER INFORMATION

See applicant information
 Owner Name: Same
 Address: _____
 City: _____ State: _____ ZIP: _____
 Phone: _____ Email: _____

APPEAL INFORMATION

Appealing decision made on the date of by Building Official Fire Official Property Maintenance Official
 rendered on the following date: 10/10/18
 Code(s) (IBC) IMC, IPMC, etc.) and year-edition: 2015 edition
 Section(s): VMC 305.1, 308.1, 702.1 / Notice of Structure
un-fit for human occupancy

REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:

Please return the completed form and any supporting documentation to the address or email below. A \$208 fee is required at the time of submittal. The application will not be further processed until this fee has been collected.

Chairman, Fairfax County Board of Building Code Appeals
 12055 Government Center Parkway, Suite 334
 Fairfax, VA 22035-5504
 Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov

BBCA appeal_request 2018

RESOLUTION

WHEREAS, the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of enforcement of the VM Code/ 2015 Edition; and

WHEREAS, an appeal has been timely filed and brought to the attention of the Board; and WHEREAS, a hearing has been duly held to consider the aforementioned appeal; and WHEREAS, the Board has fully deliberated this matter; now, therefore, be it

RESOLVED, that the matter of

Appeal No. 181022.0AP
In RE: FFX COUNTY D O C v. KAREN E. Mobbs

The appeal is hereby DENIED for the reasons set out below.

THE VIOLATIONS CITED IN THE NOTICE OF VIOLATION HAVE NOT BEEN CORRECTED NOR HAS ANY ATTEMPT BEEN MADE BY THE APPEALANT TO CORRECT THEM AND MAKE THE COUNTY RE-INSPECT THE CONDO UNIT.

FURTHER, be it known that:

- 1. This decision is solely for this case and its surrounding circumstances;
- 2. This decision does not serve as a precedent for any future cases or situations, regardless of how similar they may appear;
- 3. (If appropriate to the motion) No significant adverse conditions to life safety will result from this action; and
- 4. All of the following conditions be observed.

- a. N/A
- b. _____
- c. _____

Date: 11-14-18

Signature: [Signature]
Chairman, Board of Building Code Appeals

Note: Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219 or by calling 804.371.7150.

Carla Guerra-Horras hereby certify that this is
CUSTODIAN
a true copy of a Fairfax County Department of Land Development
Services record of which I am a custodian.

Carla Guerra-Horras
CUSTODIAN

Brian Foley hereby certify that this is
SUPERVISOR OF CUSTODIAN
a true copy of a Fairfax County Department of Land Development
Services record of which Carla Guerra-Horras is the
CUSTODIAN
custodian and that Carla Guerra-Horras reports to me.
CUSTODIAN

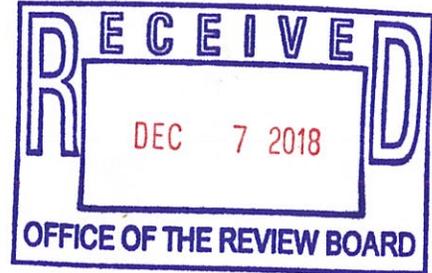
Brian Foley
SUPERVISOR OF CUSTODIAN

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

- Uniform Statewide Building Code
 Statewide Fire Prevention Code
 Industrialized Building Safety Regulations
 Amusement Device Regulations



Appealing Party Information (name, address, telephone number and email address):

Karen Hobbs 703 608-2605 keh357@aol.com
11812 Breton Ct #2
Reston, VA 20191

Opposing Party Information (name, address, telephone number and email address of all other parties):

Department of Code Compliance (703) 324-1300
12055 Government Center Parkway, Ste. 1016
Fairfax, VA 22035

Additional Information (to be submitted with this application)

- Copy of enforcement decision being appealed
 Copy of record and decision of local government appeals board (if applicable and available)
 Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 2018, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: Karen Hobbs

Name of Applicant: Karen Hobbs
(please print or type)

I am seeking to overturn the decision of the Fairfax County Board of Building Codes to "uphold" the violations cited by investigator S. C. Lunsford of Fairfax County Department of Code Compliance, and to void the Notice of Violations, if possible.

No proof of any of the 3 violations was provided at my appeal hearing. I believe the board made their decision after being swayed by investigator Lunsford's final comments in which she described my home to be cluttered and unsanitary and went on and on about flies. While there is nothing in my home that violates any building codes and Ms. Lunsford has no proof of such, she chooses to misrepresent facts in order to serve her purposes. Take for example her gross exaggeration about flies. There were some fruit flies in my kitchen which appeared to be attracted by an apple which was going bad.

While I regret that there were a couple of areas of my home that were messy I contend that if she were to also barge into any of the other condos in my building or any of the buildings in the neighborhood she could easily find the same or worse - but nothing in my home violated any building codes.

Then there is the question of WHY, in fact, I was singled out to be inspected and why it was necessary to give false pretenses as a reason to enter my home. And Why did she take photos without my permission? Thanks to my FOIA request I have seen that she wrote that I authorized an inspection - and nothing is further from the truth!? Under threat of using a locksmith to enter my unit if I didn't voluntarily allow her in, I allowed her to come in - expecting to prove that the odor she described was not coming from inside my home! In their records DCC states the reason for their investigation as "Unsanitary living conditions" - then later was changed to "Structures Unsafe, Dilapidated Or in Disrepair."

It should be noted that the Complainant, Bob Howard who owns the unit across the hall and is the owner of Welborn Management and his daughter, Laura Davis have filed several complaints before - which have all been unfounded. I am enclosing some evidence of this.

Mr. Howard's condo is located directly next to the trash room - which is where the odors come from - but he insists on blaming me.

M. Caudle

It should be noted that in their complaints they describe the interior of my home, yet neither have ever been in my home!? Please note where DCC employee M. Caudle acknowledges this. In fact nothing they have said about the interior of my home or anything that goes on there is true. It is all false, made up immediately after I stopped being friends with Mr. Howard's daughter, Laura Davis, and is motivated by spite.

I would have thought that a county agency like Fairfax County DCC was supposed to remain arbitrary during investigations but in this case it was just the opposite. Ms. Lunsford and DCC were "catering" to the wishes of Bob Howard.

I also would think that there must be some way to protect a homeowner like me from being subjected to what is obviously a pattern of unfounded complaints from people like Bob Howard and his daughter Laura Davis?

(p. 1 of 4)

Thank you,
Karen Hobbs

Karen Hobbs

Following are some of the non truths that Inv. Lunsford reported:

1. I did NOT authorize an inspection!

I merely relented to allowing her to step inside my home so she could tell that the odor she described was not coming from inside my home.

I didn't realize that the claim of odor was just a ploy and that she really wanted to investigate other things. Please

* note that at first the "problem code" was reported to be "Unsanitary living conditions," but then it changed to "structures unsafe, Dilapidated OR in Disrepair"

2. The interior was not heavily cluttered with misc. junk and debris! Those are my belongings.

3. The sliding glass door was Not obstructed.

4. Hallways were not obstructed

5. The interior surfaces were not unsanitary.

6. There was No urine/feces on the floor!

Note: I did deny her free roam of my home as she did not have any warrant and I had not authorized an inspection.

(p. 2)

I also did not give her permission to take photos and will be discussing the whole matter with an attorney.

While I regret that my home was not neater - at best it could be said that there were a few messy areas - but nothing qualifies for a building code violation.

I am including photos taken before Ms Lunsford lied & bullied her way into my home and some other diagrams and notes. to clarify the condition of my home

Please also note that the Chairman's notes in their "Resolution" assume that the violations are real - but I contend that they are not - so when asked what "repairs" I had made I answered that I hadn't done anything other than my normal housework.

I believe that during her final comments, it was Ms Lunsford's claims of urine & feces which "Swayed" the board members. She also went on and on about flies -

(p. 3)

and the only flies were merely some fruit flies around an apple that was going bad!

After the hearing I insisted on Ms. Lunsford showing me what photo she had that she claimed showed feces. I have marked that photo and that was NOT feces. So again, there is no evidence of any of the violations she cited me for, yet she declared my condo "Unfit for human habitation" - denying me access to my home and causing me to spend about a month sleeping in my car.

The last night it snowed!

Then please see the photo of how she left my door after removing the placard.

I truly hope this appeal will put an end to this nightmare.

Thank you,

Karen Hobbs
11812 Breton Ct #2
Reston, VA 20191

(p. 4)

Documents Submitted
By the Owner (Karen Hobbs)

(Page left blank intentionally)

This would have been seen as "unsford's evidence" if un-sanitary surfaces, because he claims those brown spots are feces - which they are not!
KH



This is Not Feces!!

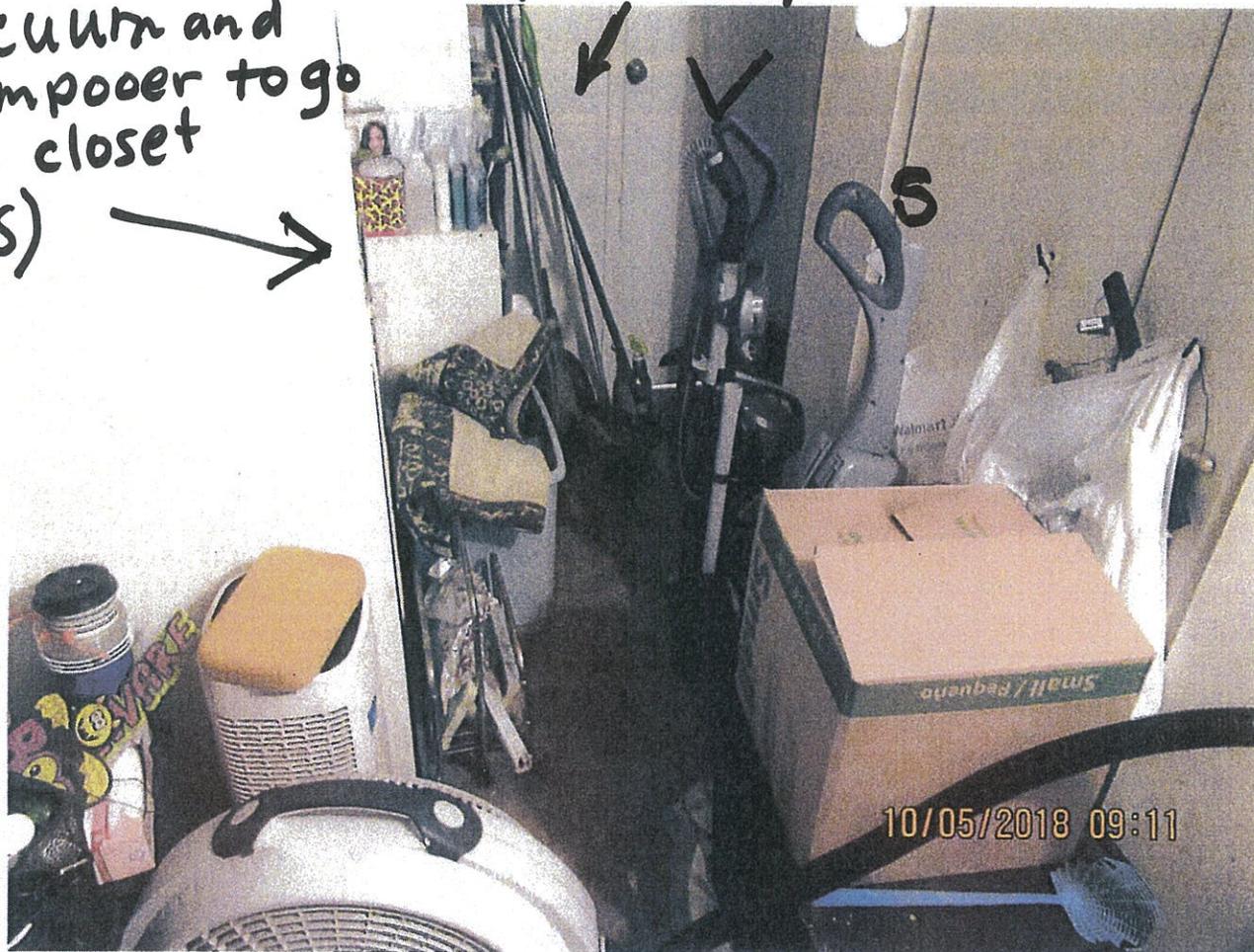
10/05/2018 09:16



The brown spots are chipped areas on the tiles. KH

mops & brooms, about to be put away.

Vacuum and
shampooer to go
into closet
(VandS)



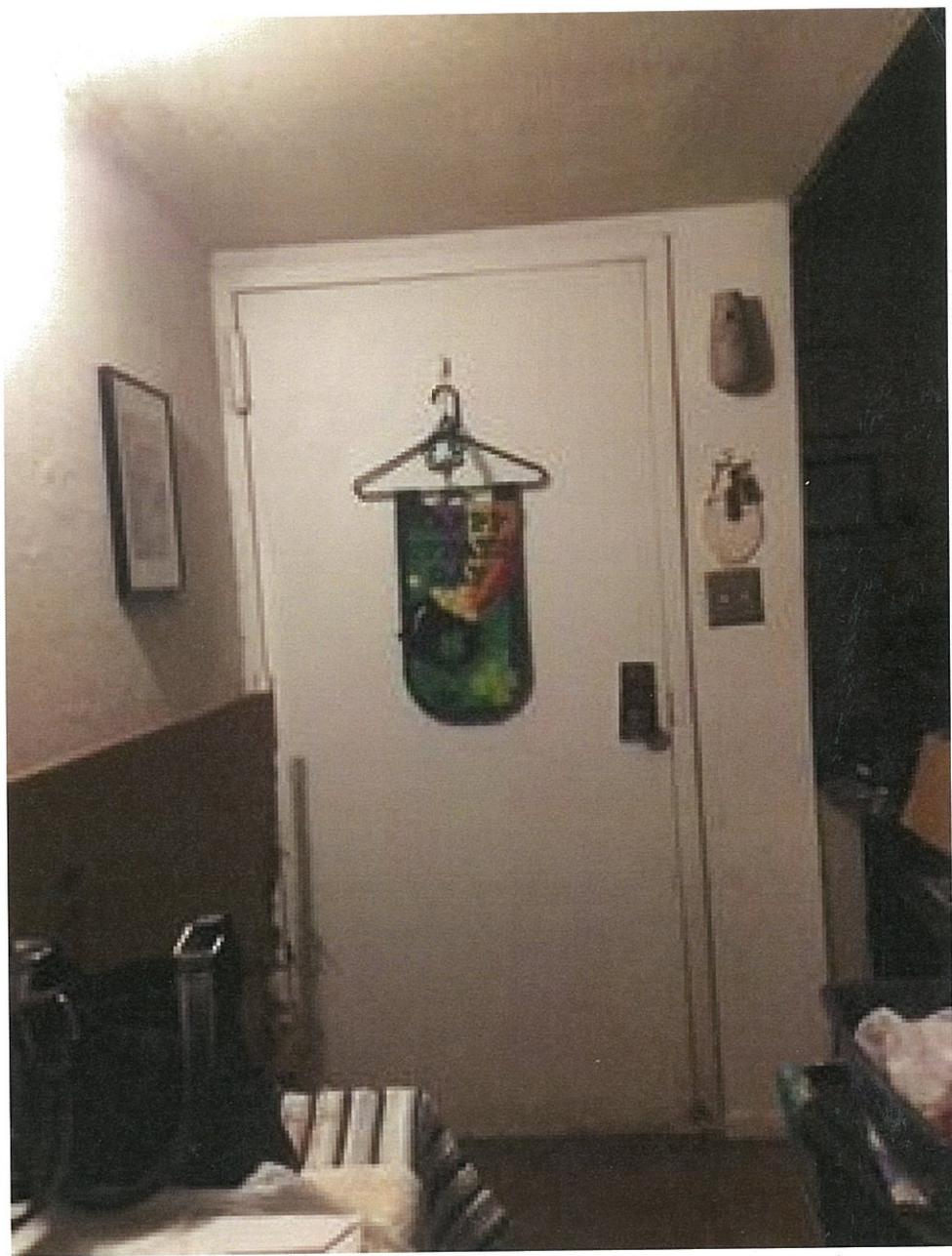
Front
Door
Hallway



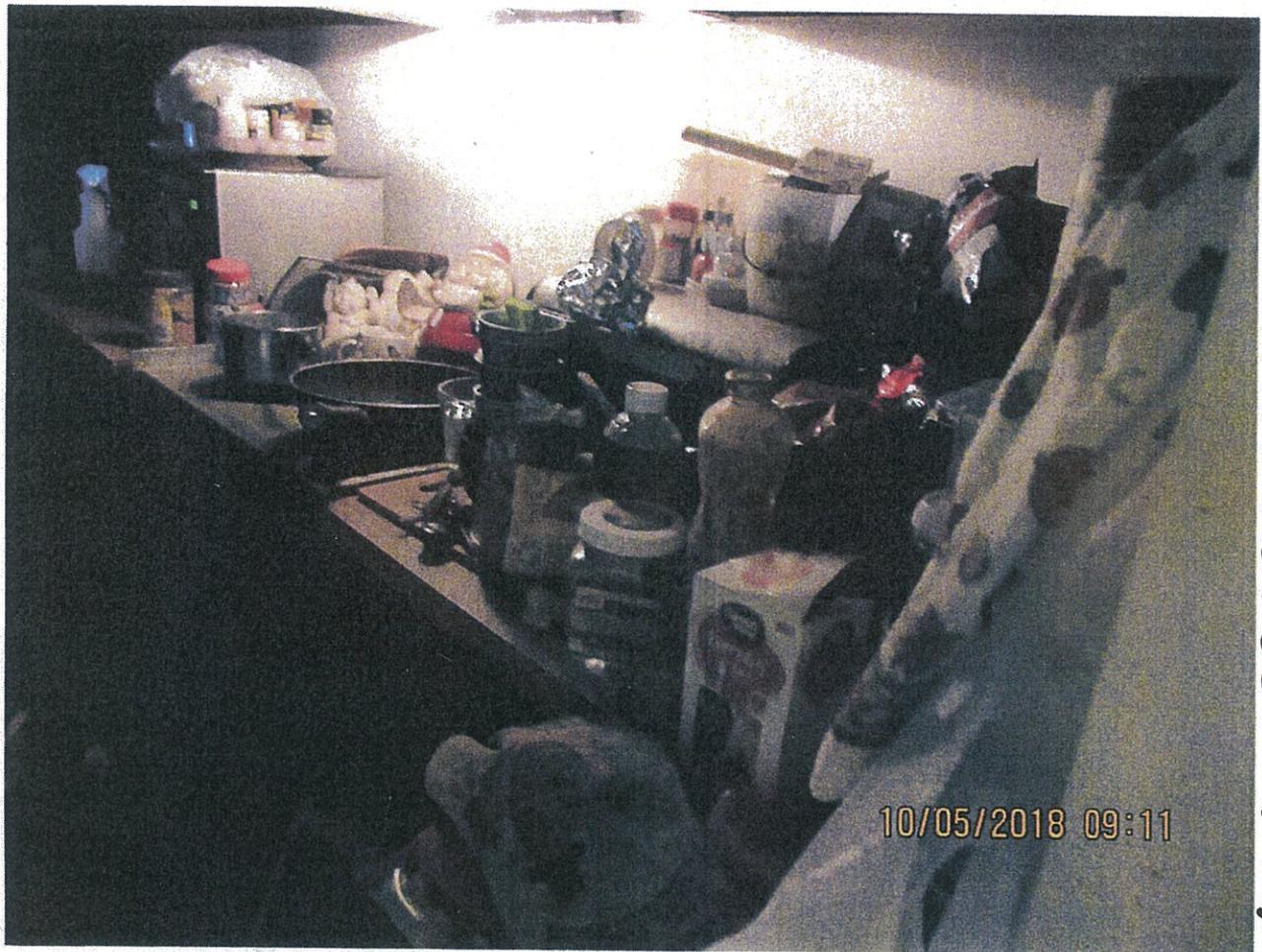
2 hampers, usually
in Bed rooms but
out for doing
laundry

10/05/2018 09:13

← pail of Kitty
litter used as a bucket



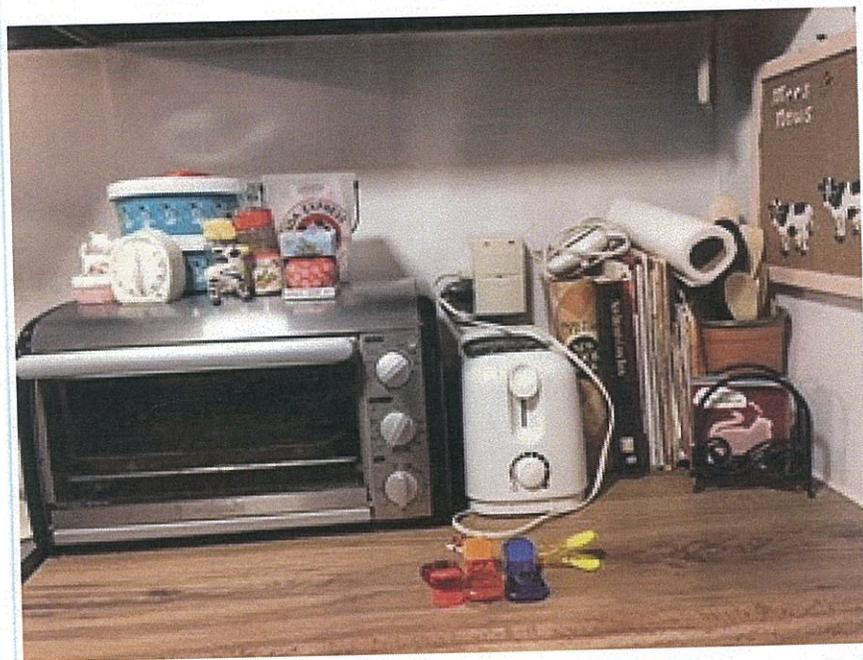
Front
Door 71
Hallway
(opposite
direction)



see other photos. Also note that I was working on a couple of kitchen appliances and had moved things OFF of them and put them here.



this is the same corner

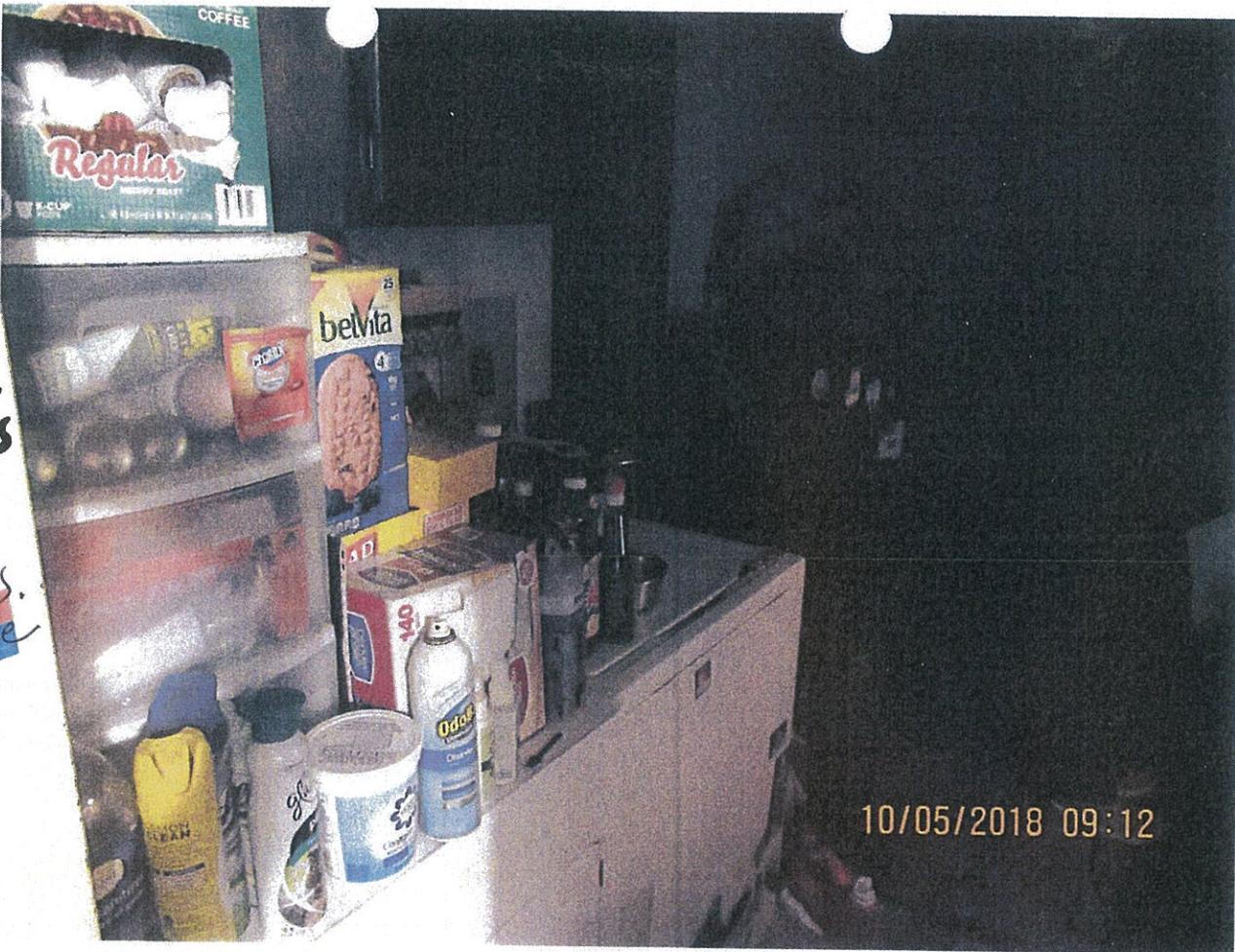


if you move
the plastic
bins of
vitamins and
prescriptions -
this is what
you see



If you move
all the chips
bags this is
what is under
them, a plastic
bin of vitamin
& prescription
for me - and
another for
my pets.

→
plastic
drawers
holding
laundry
supplies.
and some
cleaning
supplies



These things are
stacked on my dryer.
Note: there
should be a cabinet
behind them and
next to the one
you can see in the
upper right hand
corner. The person
who sold me the
condo was supposed
to give me the
cabinet - but she
never did. I haven't been
able to afford a new
one so this is how I made do. Actually, the
whole condo is short on closets/cabinets.



Here it's a
little neater.

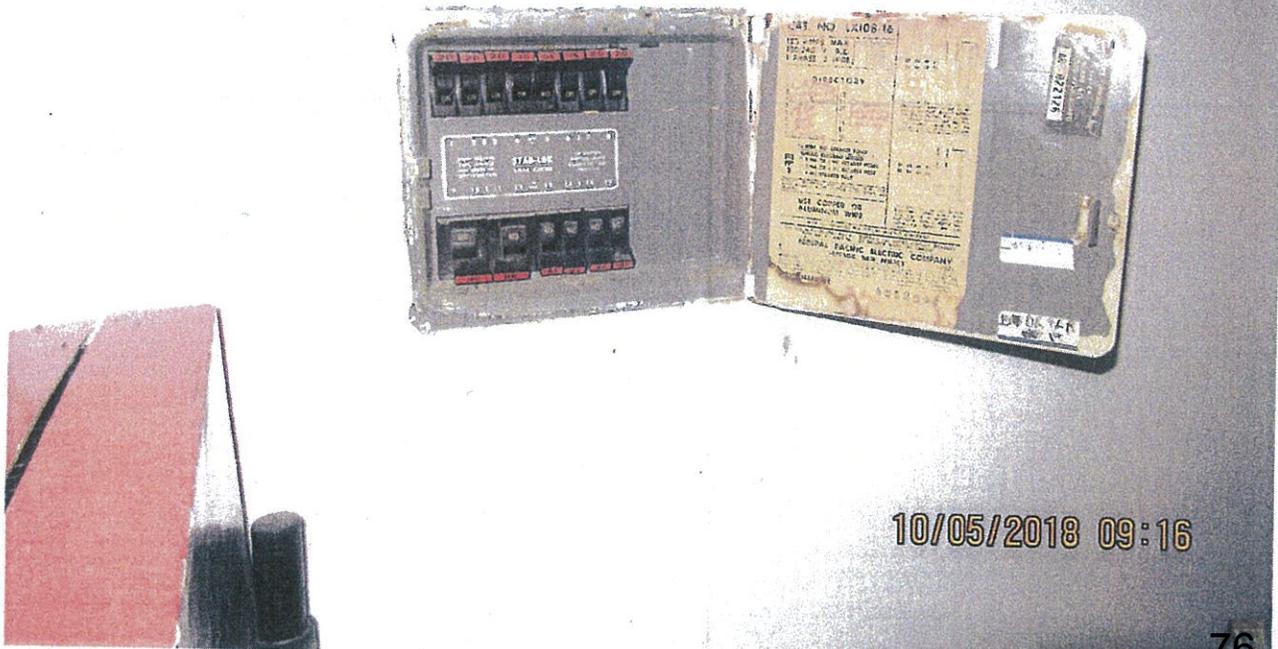


Refrigerator pulled out from corner. To work on.



These items are usually where the refrigerator is - which is temp only.

my circuit breaker box. What's she saying about this? Why the photo? because it looks old??



a messy dining room table is the only thing I'm guilty of here.



Small temp. fridge

the doorway to Den/or Dining Room.



One Corner in the den.

Sliding Glass Door

Cat condo & tree

Shelves

TV Shelves

Long, old Sofa

Shelves

Table

Futon Chair

Desk extension

Laundry

Baskets

Desk

chair

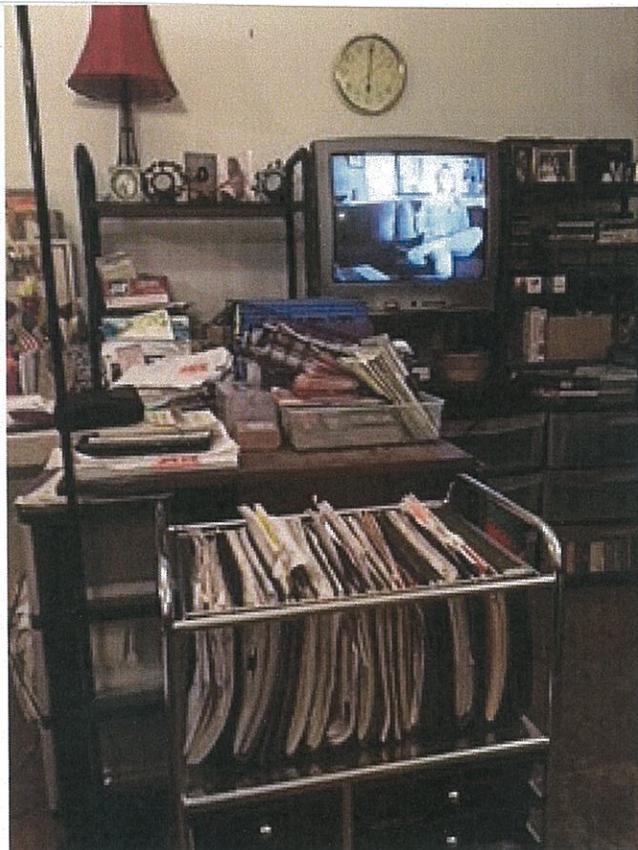
Entrance to Kitchen

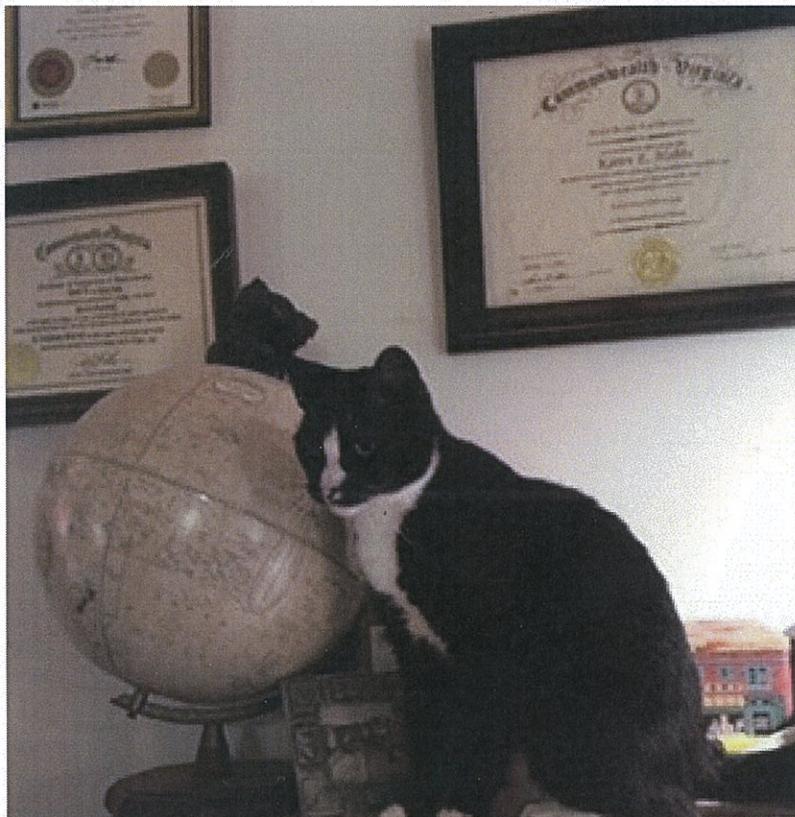
Filing cabinets

Step down

Front Door

see diagram and previous photos

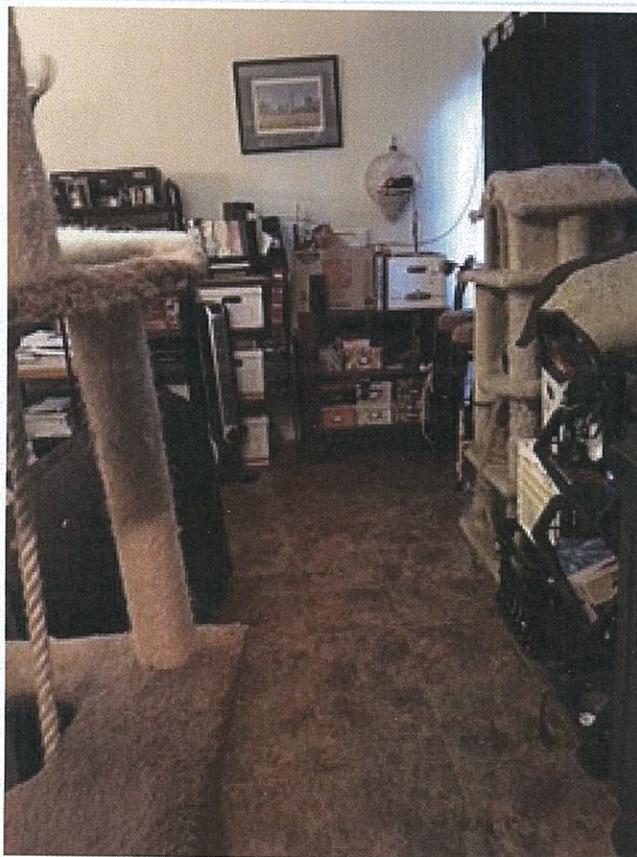




sliding
glass
door is
Not
obstructed.
The chair
is kept
up against
the back
wall



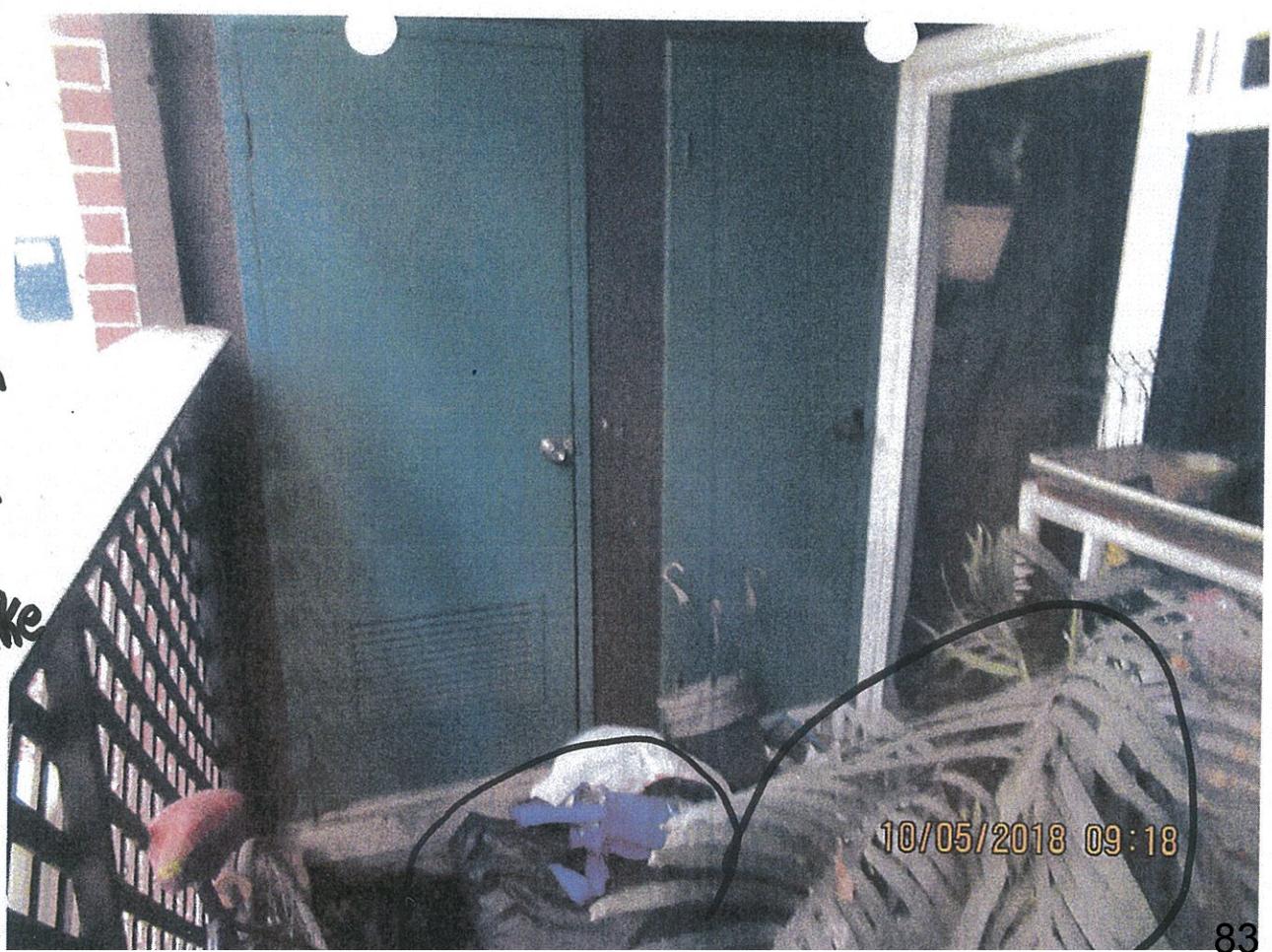
This is where the man was standing - at the sliding glass door - in the previous photo.

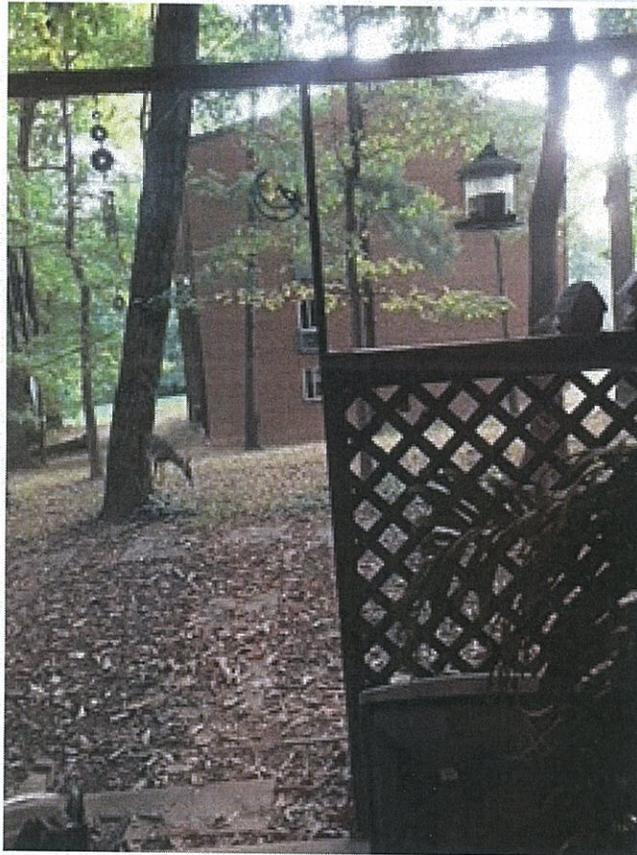


getting
thrown
out on
next
trash
day.
Fake
tree

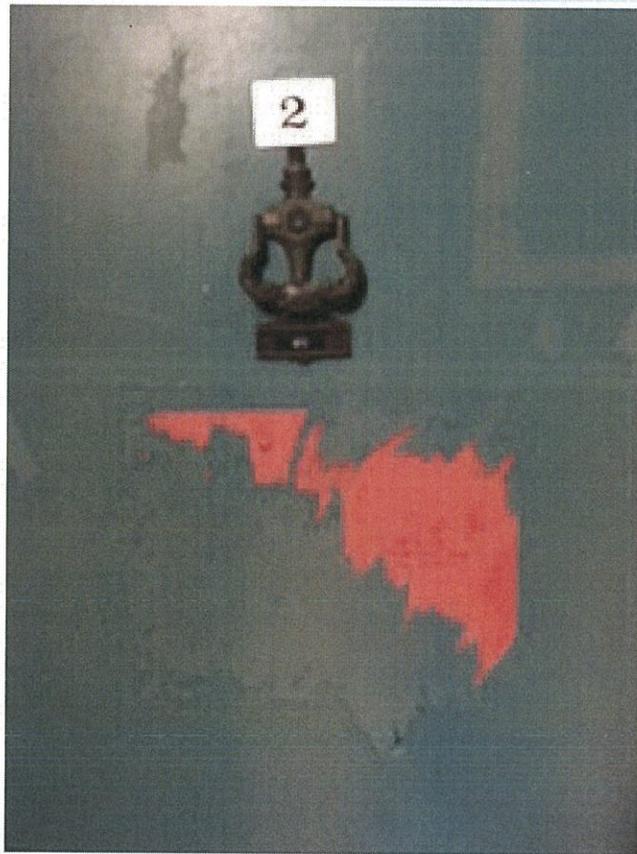


was
going
out on
next
trash
day.
the fake
tree
and a
trash
bag.





A view from the sliding glass door -
to show the pathway from the door across
the patio - was clear.



This photo is blurry but shows how Fairfax County Dept. of Code Compliance investigator, S.C. Lunsford left my front door - remnants of her "placard" and very scratched up paint!

FRAMME LAW FIRM, P.C.
2812 EMERYWOOD PARKWAY
SUITE 220
RICHMOND, VIRGINIA 23294

JUDY SNEAD, ATTORNEY
PHONE: 804-649-1334
FAX: 804-440-7508
WWW.FRAMMELAW.COM

December 5, 2012

Department of Code Compliance
Attn: Steve Mason
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035

Department of Code Compliance
Attn: James Watson
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035

Re: Karen Hobbs
Freedom of Information Act Request
Our File: VA 553239

Dear Mr. Mason and Mr. Watson:

Ms. Karen Hobbs sought this firm's assistance regarding information she requests in accordance with the Virginia Freedom of Information Act, Va. Code § 2.2-3700, et seq.



In particular, Ms. Hobbs requests that she be provided in writing any documentation regarding complaint #86223 filed against her. (see below). It is our understanding, that Ms. Hobbs has been the subject of various complaints. Ms. Hobbs has concerns that complaints are not being filed in good faith. In this specific case, Ms. Hobbs reports that she noticed an inspector looking at doors and inquired if he needed assistance. It is my understanding that the nature of the complaint was that Ms. Hobbs was having electrical work being performed by an unauthorized or unqualified contractor. Ms. Hobbs reports that she explained to the inspector at the time that such was not the case and noted what work she had done; and that she was subsequently informed that the matter was closed.

According to the county website, the complaint was closed as, "Unfounded (No Problem Found)" disposition. Ms. Hobbs is concerned about the cumulative affect of complaints on her reputation and character. Therefore, she requests that you investigate the complaint and allegation reported to your office, as well as Ms. Hobbs expressed concerns. Upon completion of such, Ms. Hobbs requests that you expunge this complaint entry.

Ms. Hobbs requests that within five (5) working days, you provide any FOIA records about this complaint (Va. Code § 2.2-3704 (B)). You may send the record, as well as written confirmation of your intention to expunge complaint #86223 directly to the attention of Ms. Hobbs at the address provided below.

By
Laura
Davis
and
her
father
Bob
Howard

Laura Knew I had changed my garbage disposal, but she presented that to DCC as: that as an unlicensed person - I had done electrical rewiring. Deliberately, misrepresenting the information in order to make it seem like a fire hazard.

Complaint #	86223
Street Address	11812 Breton Ct 2
Magisterial District	
Complaint Description	Unpermitted Other
Agency	Code Compliance
Status	Closed
Opened Date	07/30/2012
Closed Date	08/20/2012
Disposition	Unfounded (No Problem Found)
Inspector Assigned	James Watson, 703-324-1300
Notice of Violation and/or Corrective Work Order	No
Litigation	No

Please note that our office will continue our consultation with Ms. Hobbs regarding other listed complaints. However, in the interim, should you wish to contact this firm directly, please do so only in writing.

Sincerely yours,

Judy Snead

cc: Karen Hobbs
11812 Breton Court #2
Reston, VA 20191

FRAMME LAW FIRM, P.C.
2812 EMERYWOOD PARKWAY
SUITE 220
RICHMOND, VIRGINIA 23294

FRAMME LAW FIRM PC

JUDY SNEAD, ATTORNEY
PHONE: 804-649-1334
FAX: 804-440-7508
WWW.FRAMELAW.COM

December 27, 2012

Department of Code Compliance
ATTN: Steve Mason
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035

**Re: Complaint #83562
FOIA and Expungement Demand**
Our File: VA 542314 (Karen Hobbs)

Dear Mr. Mason:

Ms. Karen Hobbs has requested this firm's assistance regarding the above-referenced matter.

Ms. Hobbs has provided our office with the enclosed copy of a "notice of violation" dated June 22, 2012. The case number in the letter is identified as **#83562**. The first violation is listed as "mechanical appliances" under VMC Code #603.1, which is defined in the notice as requiring that all "mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition..." The notice purports to allege that Ms. Hobbs' "central air conditioning system is not working correctly."

Ms. Hobbs has also provided our office with a copy of a resolution, stating that this violation was deemed "void" and that Ms. Hobbs repaired the air conditioning system, while not mentioned in the notice, at a significant expense to her. On behalf of Ms. Hobbs, we request that the County expunge this entry from all searchable databases viewable to the public and obtainable under FOIA. In support of such, the resolution stated that the violation was "void." Furthermore, the maintenance code as cited in the June 22 notice does not cover a central air conditioning system, which is not an "appliance." Therefore, the notice of violation should never have been issued and at a minimum, the notice cited an ambiguous and vague VMC provision as applied to the central air condition system, as no homeowner is required to have an air condition system and many cool with fans by choice or necessity.

Additionally, Ms. Hobbs has provided our office with a copy of a "community complaint result," which references complaint #83562. It identified the complaint description as "hoarding" with a disposition as "compliance." As you can see from the enclosed "notice of violation" dated June 22, 2012, nowhere in large or fine print is there a mention of "hoarding" in complaint #83562. Ms. Hobbs has repeatedly asked that your office remove this entry from your website. Given nationally viewed television shows regarding hoarding, we are certain that your office can appreciate and accept Ms. Hobbs' concerns regarding her reputation, character and that she has been affiliated with a complaint of "hoarding" that was resolved by compliance. Ms. Hobbs maintains she was not hoarding, which is a grave and drastic description of one's home. Thus,

on behalf of Ms. Hobbs, we request that you immediately expunge this complaint from your website and any publicly searchable database.

Below is a list of complaints that are being reported by the County. We request a copy of all notices of violations for each respective complaint and any records relative to each complaint under FOIA, with the exception of complaint #83562, which Ms. Hobbs states she believes she has copies of all information relative to complaint #83562. Should there be a copying fee for provision of records subject to FOIA, we request that you send a notice to Ms. Hobbs as to the cost to provide such records.

#	Open Date	Unit	Description	Status	Closed Date	Disposition
83562	5/17/12	2B	Hoarding	Closed	8/8	Compliance - Not true
83624	5/22/12	2B	DCC Fire	Closed	7/23	Compliance - Not true
Duplicate 85654	7/13/12	2	Hoarding	Under Investigation		Admin. Fire Action
Duplicate 85809	7/18/12	2	DCC Fire	Closed	7/19	Admin. Action
Laura Davis 86222	7/30/12	2	Hoarding	Closed	8/1	Admin. Action
Laura Davis 86223	7/30/12	2	Unpermitted Other (Electrical)	Closed	8/20	No problem found
Bob Howard 86549	8/8/12	2	Unsanitary Living Conditions	Closed	9/4/12	Unfounded. No problem found
Laura Davis 86410	9/27/12	2	Unsanitary Living Conditions	Under Investigation		
Bob Howard 89033	10/17/12	2B	Hoarding	Under Investigation		

Ms. Hobbs would like to note that she would like to be a cooperative resident of the County; however, she is concerned if complaints are being filed in good faith and concerned that she is not being notified of each individual complaint. Ms. Hobbs is requesting that your office respond to her demands within ten (10) calendar days of the date of this letter.

In order to expedite a resolution in this matter, you may and should written confirmation of your intention to address all matters noted in this letter and our previous letter to your office. You may send the documents and reply directly to Ms. Hobbs. If you wish to communicate with this firm directly, please do so only in writing, as we are unable to respond to telephone inquiries.

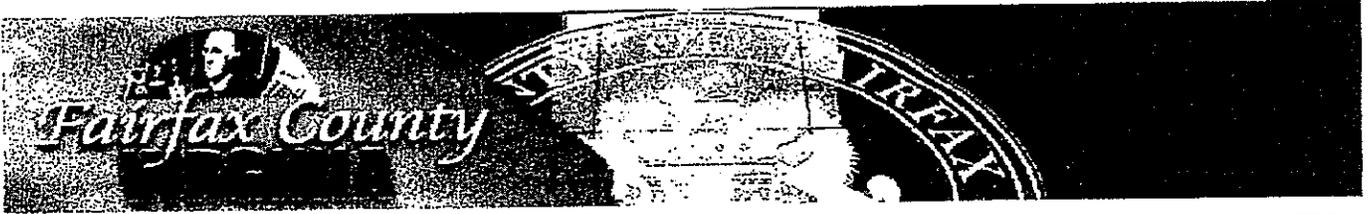
Sincerely yours,

Judy Snead

Judy Snead
Encl.

cc: Karen Hobbs
11812 Breton Court #2
Reston, VA 20191

* Please note that Laura Davis and her father Bob Howard began filing complaints THE VERY DAY after I won my appeal! Or as this attorney says on p. 1 "This NOV should never have been issued, and at a minimum..." Also DCC had just been in my home about 2 weeks earlier and found NO Health or Safety issues! So WHY???



Home Living Here

Search Site:

Complaints

Submit a Complaint
Complaint Search

homepage > fairfax inspections database online, fido > community complaint inquiry

Community Complaint Result

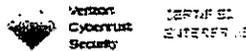
Complaint # 83562
 Street Address 11812 Breton Ct 2b
 Magisterial District Hunter Mill
 Complaint Description Hoarding
 Agency Code Compliance
 Status Closed
 Opened Date 05/17/2012
 Closed Date 08/08/2012
 Disposition Compliance
 Inspector Assigned Marsha Ansel, 703-324-1300
 Notice of Violation and/or Corrective Work Order Yes
 Litigation No

→ *the day of my appeal*
Not true! (see letter from my attorney)

Previous

Contact Us: [General \(Office of Public Affairs\)](#) | [Technical \(Web Administrator\)](#) | [Directed Inquiries \(County Agencies\)](#)
Phone: County Main Number - 703-FAIRFAX (703-324-7329), TTY 711 | [County Phone Listing](#)

[ADA Accessibility](#) | [Website Accessibility](#)
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Website Survey



Language Translations

RE: Karen Hobbs



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

NOTICE OF VIOLATION OF THE VIRGINIA MAINTENANCE CODE

DATE OF ISSUANCE: June 22, 2012

CERTIFIED MAIL #: 7011-1570-0001-6632-4763

CASE #: 2012-03403 **SR#:** 83562

PROPERTY OWNER: Karen E. Hobbs
ADDRESS: 11812 Breton Court, #2
Reston, Virginia 20191

LOCATION OF VIOLATION: 11812 Breton Court, #2
Reston, Virginia 20191-3212
Tax Map Ref: 26-1 ((19)) (12) 2B

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code - 2009 Edition), an inspection on June 18, 2012, and discussion with the property condominium owner, revealed violations as listed below at the referenced location. The cited violations must be corrected within **30 days** from receipt of this notice unless otherwise indicated.

Violation: MECHANICAL APPLIANCES

VMC 603.1. All mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

Location: 11812 Breton Court, #2, Reston, VA.

Work To Be Performed: Owner stated the central air conditioning system is not working correctly. Repair, replace and maintain the air conditioning system and unit to operate as it was designed.

*Note:
In this case
FFX DCC cited me with
code that did not
even apply to the
situation. I believe
this was in order to
attempt to force an
inspection, if needed.
Also note that it is
very misleading to say the
result of this case was
"Compliance!"
(also see my
attorney's
letter)*

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-9346
www.fairfaxcounty.gov/code

**KE: Karen
Hobbs**

Karen E. Hobbs

June 22, 2012

Page 2

Violation: INSECT SCREENS

VMC 304.14. During the period from April 1 to December 1, every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every screen door used for insect control shall have a self-closing device in good working condition.

Location: 11812 Breton Court, #2, Reston, VA.

Work To Be Performed: Observed hole and tear in window screen of front condo window. Repair, replace and maintain window screens so that screens are intact, without holes or gaps, to comply with VMC 304.14, above.

All repairs, alterations, and/or additions must be made in accordance with applicable laws. Any additional violations that may appear as work progresses will require correction.

Information about obtaining any necessary permits required by other Fairfax County agencies may be obtained by calling (703)222-0801 and requesting the appropriate department.

The owner of a building or structure, or the owner's agent or any other person involved in the use of the subject building or structure may appeal a decision of the code official concerning the application of the Virginia Maintenance Code to such building or structure and may also appeal a refusal by the code official to grant a modification to the provisions of this code pertaining to such building or structure. Applications for appeals shall be submitted in writing to the Fairfax County Board of Building and Fire Prevention Code Appeals within 14 calendar days of the decision being appealed. Appeal application forms may be obtained by contacting:

Fairfax County Board of Building and Fire Prevention Code Appeals
Attention: Secretary to the Fairfax County Board of Building and Fire Prevention Code Appeals
Office of Building Code Services
Department of Public Works and Environmental Services
12055 Government Center Parkway, Suite 444
Fairfax, VA 22035-5504
Telephone: (703)324-1780.

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the code official's decision.

The Fairfax County Board of Building and Fire Prevention Code Appeals shall meet within 30 calendar days after the date of receipt of the application for appeal.

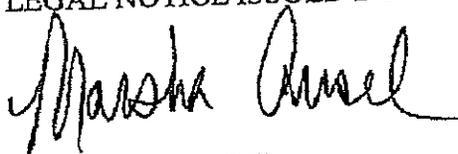
Re: Karen Hobbs

Karen E. Hobbs
June 22, 2012
Page 3

A follow-up inspection will be made at the expiration of the time period outlined in this Notice. Failure to comply with the Notice will result in the initiation of appropriate legal action to gain compliance with the Virginia Maintenance Code which can result in court ordered fines of \$100 for the first offense and \$350.00 for any subsequent offense per day totaling up to \$4,000.00.

In accordance with the code, the owner or person to whom this notice of violation has been issued is responsible for contacting me within the time frame established for any re-inspections to assure the violations have been corrected. When calling to schedule a re-inspection, please mention the subject address, and the "case number" at the top right corner of this page. I can be reached on (703) 324-9323 Monday through Thursday, weekdays.

LEGAL NOTICE ISSUED BY:



Marsha Ansel, MPH
Code Compliance Investigator
Zoning and Property Maintenance Inspector
Environmental Health Specialist II
Assistant Fire Marshal, Inspections

DCC Inspection Report

(Inspection # : 6538876)

CASE # : 201407347

Service Request # : 110915

Problem Code : CPULC: Unsanitary Living Conditions

Date Rcvd : 10/14/2014

Assigned To : CAUDLE

Res.Code : UNFND

Location: 11812 Breton Ct, Reston VA 20191-3212

Inspection Date	Inspection #	Inspection Status	Insp Sance #	INSPBY
10/22/14 8:03	6538876	CLOSED	3	MCAUDL
The investigation revealed the owner left me a note to stop pestering her. I spoke to the police officer on the report and called him back to confirm that he had not been inside the home, he replied he had not been inside, his info was based off the neighbor whom I also spoke to who had not been in the home. Case closed				
CODE	Code Violation	Status		
ZZ305.1	INTERIOR STRUCTURE GENERAL	CLOSED		
CERC FINAL	ENTER RESOLUTION CODE	UNFND		
LOG ACTION				
Date	LOG TYPE	Comments		
10/16/14	Called Complainant	I called the officer on the complaint, he never got in and his info is based off the neighbor whom I also spoke to and has not been inside.		
10/16/14	Assigned Case To Inspector	CPRPMT #1 ASSIGNED TO: MICHAEL CAUDLE		

The investigator realizes these people have no real knowledge of the interior of my home - they describe it in gross detail!

Bob Howard - owner of Wellborn Management and his daughter, Laura Davis - who lived in the unit for several years and I was friends with most of that time until I ended the friendship - at which time she became extremely spiteful and malicious - making up and spreading false stories about my home

filed about 9 complaints between them. All were unfounded.

The History of Bob Howard's and his daughter Laura Davis' complaints to Fairfax County D.C.C. :

Case #	Complainant	Date	Complaint #	Complainant Name	Agency	Status
86222	Laura Davis	7/30/12	2	Raymond Rogers	Admin Action	
86223	Laura Davis	7/30/12	2	James Watson	Unfounded, No Problem found	
86549	Bob Howard	8/8/12	2	Gabe Zakkak	Unfounded, No Problem found	
87086	Laura for Laura's unit	8/23/12	1A	R. Parsons	Unfounded	
88410	Laura Davis	9/27/12	2	Gabe Zakkak	Unfounded, No Problem found	
89033	Bob Howard	10/17/12	2B	Gabe Zakkak	Unfounded, No Problem found	
94547	Laura Davis	5/20/13	2	Gabe Zakkak	Admin Action	
94813	Laura Davis	5/23/13	2	Gabe Zakkak	Returned program	
120589	Bob Howard's Hoarding employee	8/26/15		R. Parsons	Unfounded	
149466	Bob Howard's Hoarding employee	5/4/18		R. Parsons	INACC	
155238		10/4/18		C. Lunsford	Open	
then						
155372(?)		10/9/18				Also C. Lunsford case - new # same

1st: Unsanitary Living Conditions
2nd: Structure Unsafe, Dilapidated or in Disrepair

Bob Howard, owner/ceo
Wellborn Management and
owner of the unit across the hall
from me and his daughter, who lived
in that unit and was good friends
with me for several years - until I
ended the friendship,

Are responsible for filing at least
9 complaints in the last few years,
beginning right after I ended that
friendship.

All have been "Unfounded."

On 8/8/12 Re: 86549 -

Please note that Bob Howard filed his
first complaint the very day that I
won my appeal in reference to violations
that FFX County Dept of Code Compliance
had charged me with.

Also it should be very important to note
that Fairfax County Code Compliance
Investigator, Zoning and Property
Maintenance Inspector, Environmental
Health Specialist II and Assistant
Fire Marshall, Inspections' Marsha Ansel
had been inside my condo about 2 week

prior - and had found NO health OR
Safety issues!

So Why in the world was he
doing that??

Then, prompted by Laura Davis
and Bob Howards continued
complaints the HOA filed a suit
in Fairfax County General District
Court seeking "injunctive relief
and an order to correct those
violations..."

As a result, an inspection was
arranged by Consent Order in which
the Judge also ordered that the HOA
investigate the ongoing problem of
water leaks from above and the
damage they have made to my unit.
Enclosed are the findings of that
inspection, written by the Property
Manager at that time. (The Property
Management Company is the same
as now.)

It might be interesting to note that the HOA asked the Judge to make me pay their attorney's fees - which were at least \$50,000 - but the Judge said NO. She did not consider them the prevailing party as the inspection was negotiated by consent and it was the inspection that they had wanted - so they got what they wanted... But also we had shown the Judge that I had been asking the HOA to come to my unit to investigate the water leak problem and had pointed out that they should be able to tell that my home was not unsanitary while they were there - but they were not satisfied by that.

So it was evident that it had not been necessary to file a suit to have entered my unit!?

On **5/14/18** one of Bob Howard's employees filed complaint # **149466** of Hoarding. Based on the comments in DCC's files you can see that they are clearly using hearsay - the same that Laura Davis began years ago - and that they are blaming me for odor in the building when their unit is located right next to the trash room and on the opposite side of the hall from me. So it is more likely that if there is odor in that unit it is coming from the trash room that it shares a wall with.

Note that they blame me for losing prospective tenants, but I can tell you that when they were looking for their last tenant there was an occasion when I was sitting on the front steps of the building and got to talking with someone who was there waiting for someone from Wellborn to come show them the unit. We were just

chatting, then someone arrived and opened the door to the unit and they both went inside.

Just a couple of minutes later that prospective tenant left - rather rapidly - and as she passed me, I said "That was fast!?" To which she replied that it was awful inside - and even shook her head as she said it.

I believe this concurs with my theory that odor from the trash room seeps into that unit - it is NOT coming from my condo! But they continue to blame me and use the rumors Laura Davis started long ago to complain to FFX County Dept of Code Compliance And Fairfax County DCC is apparently incapable of seeing this. And in addition to that they are incapable of being arbitrary in investigating - clearly catering

to Bob Howard and Wellborn
Management.

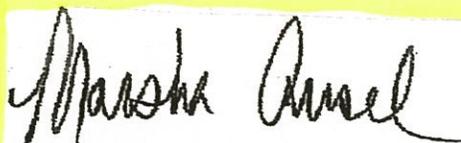
I contend that this is highly
unfair to me and must be
stopped!

Thank you,

Karen Hobbs

Bob Howard filed complaint 86549 the Very Day I won my appeal.

It should be important to note that was about 2 weeks after Marsha Ansel had been in my home! How do you explain that? Look at her credentials - and then look at how Bob Howard immediately began pursuing Another inspection



Marsha Ansel, MPH
Code Compliance Investigator
Zoning and Property Maintenance Inspector
Environmental Health Specialist II
Assistant Fire Marshal, Inspections

Re: 86549

Inspections Information:

Inspection Date	Inspection #	Insp Type	Inspection Status	Insp Source	Inspected By
11/13/2012	5842520	CPRPMT	CLOSED	2	GZAKKA

Mr. Zupan (703-837-5002) who is the legal representative for the Hunter Woods Condominium Unit Owners Association and Dar S. Cassidy

(Community Property Manager) have provided me with information pertaining to Unit 2. There was no current information provide as all information pre-dated the last interior inspection. Since no current/new evidence could be obtained, I'm unable to request a interior inspection warrant from the magistrate. Both parties have been contacted as to this investigation limitations. Since no inspection permission has been granted and no warrant can be obtained this case will be closed. Please note that the property owner has claimed harassment and is refusing to give access to her unit. She has also indicated she has obtained legal counsel.

Inspection Date	Inspection #	Insp Type	Inspection Status	Insp Source	Inspected By
10/23/2012	5837235	CPRPMT	FAILED	1	GZAKKA

A phone conversation with Karen Hobbs (703)608-2605 resulted in not allowing an interior inspection. She states that her neighbors have been harassing her and she should not have to allow an inspection every month. She fosters animals and then finds them homes. She currently has (4) cats and (1) dog. She states that ever since she broke off a friendship with a neighbor that this has been happening. The DCC has inspected this unit months ago and ended up closing the case with a result of compliance. Ms. Hobbs informed me that her legal representation will be sending DCC legal papers for all the trouble we have caused her. I explained to her that I'm trying to put an end to all the complaints by documenting everything so similar complaints do not recur. It is apparent to me that there is an ongoing issue between property owners in this condo.

Code Violation Information:

Code Violation	Status	Status Date
Interior Structure General	UNFND	11/13/2012

Certified Notice of Violation Information:

No Certified NOV is linked to this CASE.

Log Actions:

Date	Log Type	Comments
11/13/2012	Called Property Management	E-mail in case file.
11/02/2012	Called Responsible Party.	Contacted Mr. Zupan (legal rep for assoc)
10/18/2012	Assigned Case To Inspector	CPRPMT #1 ASSIGNED TO: GABRIEL ZAKKAK

No litigation information for this case!



County of Fairfax, Virginia

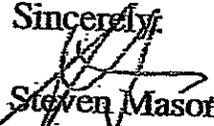
To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Karen E. Hobbs
11812 Breton Court, #2
Reston, Virginia 20191

Dear Ms. Hobbs:

This letter is to confirm that the property maintenance case investigation reference the central air conditioning system at 11812 Breton Court, #2, Reston, Virginia 20191 has been closed based on your compliance obtained on August 8, 2012. Thank you again for your assistance in this matter.

Sincerely,


Steven Mason
Division Supervisor

After I won my appeal on 8/8/12
I asked for something in writing to show
this case was closed. This is what I
got. It should help to understand
WHY the final disposition of this
case is listed as "compliance!"

Everything the complainants were writing about the interior of my home was based on the rumors that Laura Davis was spreading. So all of these complaints are based on hearsay. Below you can see that inspector M. Caudle realizes and reveals this.

There may be occasional odors in the building but they come from the trash room! These people are blaming me - but keep in mind that Laura Davis worked diligently to ensure that everyone believed her spiteful rumors.

I was so glad when I saw that M. Caudle realized that these people were talking about the interior of my home - but had NEVER been inside!

Inspections Information:

Inspection Date	Inspection #	Insp Type	Inspection Status	Insp Source	Inspected By
10/22/2014 8:03	6538876	CPRPMT	CLOSED	3	MCAUDL
The investigation revealed the owner left me a note to stop pestering her. I spoke to the back to confirm that [redacted] had not been inside the home, [redacted] replied [redacted] had not been inside, whom I also spoke to, [redacted] who had not been in the home. Case closed					
10/20/2014 11:48	6538871	CPRPMT	FAILED	2	MCAUDL
Attempted an inspection: nobody home					
10/17/2014 9:58	6532862	CPRPMT	FAILED	1	MCAUDL
Attempted an inspection: nobody home.					

Code Violation Information:

Code Violation	Status	Status Date
Interior Structure General	CLOSED	10/22/2014

Certified Notice of Violation Information:

No Certified NOV is linked to this CASE.

Log Actions:

Date	Log Type	Comments
10/16/2014	Called Complainant	I called the [redacted] on the complaint. [redacted] never got in and [redacted] info is based off the neighbor whom I also spoke to and has not been inside.
10/16/2014	Assigned Case To Inspector	CPRPMT #1 ASSIGNED TO: MICHAEL CAUDLE

Re: 110915

Inspection Report

11812 Breton Ct. #2
Reston, VA 20191

Prepared by:

Faith Price

Hunters Woods Village Property Manager, Legum & Norman, Inc.

Paul Shlesinger

President, Board of Directors for Hunters Woods Village Condominium Association

Joshua Vandeventer

Amtek Engineering Group

Summary

An inspection of the property owned by Karen Hobbs, located at 11812 Breton Ct. #2, Reston, VA, 20191 ("Unit"), was performed on Wednesday, December 30, 2015 at 1:00pm. The inspection was performed by Property Manager Faith Price, Association President Paul Shlesinger, and Amtek Engineering Group representative Joshua Vandeventer. Ms. Hobbs and her brother were also present for the inspection.

The inspection was conducted pursuant to a Court order issued in *Hunters Woods Village Condominium Association v. Karen E. Hobbs*, Case No. GV15003750-00. The inspection was to investigate complaints by multiple residents of foul odors emanating from and unsanitary conditions in the Unit. The * inspection was also performed to investigate claims by Ms. Hobbs of water damage to her Unit resulting from leaks emanating from the unit above. *As per the judge in the case.*

The inspection identified extensive damage to the bathroom ceiling. Ms. Hobbs agreed to coordinate with the association and Amtek to allow access so that this condition could be corrected. The inspection also identified a condensate drain not connected to the coil of the HVAC unit, which would result in water damage in the summer when the air conditioner is in use. No other violations or conditions to correct were observed. *The inspection did not reveal any unsanitary conditions or foul odors.*

These were NOT Violations! Just conditions!

1) Living Room/Dining Room/Hallway

The Living Room, Dining Room and hallways were inspected. No violations were observed, however, visible water damage to the ceiling in the living room was observed (Figure 1).

There was a noticeable smell of animals being present in the unit; however, there was no indication of animal urine, feces, or other condition that would be unsanitary. The smell was not noticeable from the outside the unit. The living room and dining rooms were arranged such that there was a clear path to move safely from room to room. There was no significant damage observed to the vinyl flooring, or walls.

2) Kitchen

The Kitchen was inspected. No violations were observed, however, visible water damage to the ceiling in the Kitchen was observed (Figure 2).

The water damage was observed directly above the washer and dryer, possibly from the washer of the unit above, assuming the layout is the same. The appliances appeared to be in acceptable condition and the room was clear from any tripping hazards. There was no significant damage observed to the vinyl flooring or walls.

3) Bathroom

The Bathroom Room was inspected. One condition to correct was observed.

The Bathroom has significant visible water damage to the ceiling. There is an open hole directly above the shower revealing a repair that was done to the hot water supply pipe for the shower (Figure 3). Since the unit above is vacant, it is not possible at this time to tell if the drain for their tub is leaking also causing water damage to the ceiling. Ms. Hobbs agreed to coordinate with Amtek and the Association to allow access to the unit so that this condition could be corrected.

4) Bedrooms

The master bedroom and second bedroom were briefly inspected. No violations or conditions to correct were observed.

The second bedroom appeared to be used as a storage area. There was a noticeable smell of animals being present; however, there was no indication of animal urine, feces, or other condition that would be unsanitary.

5) Utility Closet

The utility closet was inspected. One condition to correct was observed.

An HVAC unit was present, but it was observed that the condensate drain is not connected to the coil which will lead to water damage in the summer time when the unit is in use. There is also damage to the main condensate line that all the HVAC units connect to in that tier (Figure 4).

6) Miscellaneous

During the inspection, 2 dogs and 3 cats were observed in the unit.

wellborn

MANAGEMENT CO., INC.
REALTORS®

11250 Roger Bacon Dr., #20
Reston, VA 20190
703-464-7009
FAX 703-464-0127

July 17, 2018

Karen Hobbs
11812 Breton Court #2
Reston, VA 20191

Dear Karen,

~~My name is Kayla and I work for Wellborn Management Co., Inc. We manage the condo directly~~
across the hall from your unit. The prior tenant and the current tenant have reported a bad smell coming from your condo. I know there was a complaint made years ago regarding this as well. We were wondering if there was anything you could do to eliminate this smell? I know years ago lots of people needed to get involved, and I really don't want to cause that stress for yourself, your neighbors, and our management company. I would be more than happy to assist you in whatever way you need to make sure this smell doesn't permeate into the hallway. Unfortunately, if the smell remains by the end of the month, I have been directed to involve the appropriate agencies to assist us.

Thank you for your understanding, and if you'd like to speak on the phone I can be reached at 703-464-7009 X13, or by email kayla@wellbornmanagement.com.

Sincerely,



Kayla Alexander, GRI
Vice President/Associate Broker
Wellborn Management Co., Inc.

The only real estate team you'll ever need!

Commercial/Residential – Sales, Leasing, Consulting, Management
www.wellbornmanagement.com

From: Karen Hobbs keh357@aol.com
Subject: Your letter
Date: Jul 31, 2018 at 5:37:40 PM
To: kayla@wellbornmanagement.com
Cc: keh357@aol.com

Ms. Alexander,

I met your tenant, Charles, at the recent July monthly homeowners association meeting and I asked him to show me where the smell he was referring to is. First of all, I did not smell any odor in the two places he pointed out, and secondly, there was no odor coming from my unit. So if there are occasional odors in the building - they are not coming from my unit. Also, it is clear from his own explanation that the Remers clearly got to him and influenced his opinion. There is no evidence of odors coming from my unit, so please refrain from making accusations based on assumptions without any actual proof. There is, however, a great deal of evidence of the animosity between the Remers and myself and of the complaints that they have made - as well as the complaints filed by Bob Howard and the numerous ones filed by his step daughter, Laura Davis - - -

All ending in the disposition "Unfounded."

If you are referring to Fairfax County Code Compliance - they are aware of the animosity between the parties in the building and I recently provided them with the history of this situation including lawsuits.

If you would like to walk together with me around my unit to see if there are any odors coming from it, I would be willing to do that.

And if we should happen to find any odor coming from it, then I will be happy to address it.

Karen Hobbs

Sent from my iPhone

Documents Submitted
By Fairfax County
(through counsel)

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VIRGINIA:

IN THE STATE TECHNICAL REVIEW BOARD

**In RE: KAREN HOBBS
 APPEAL NO. 18-21**

**BRIEF IN OPPOSITION TO APPELLANT’S REQUEST TO
REVERSE LOCAL BOARD’S DECISION UPHOLDING NOTICES OF VIOLATION**

Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia (“Code Official”) states the following in opposition to the appeal filed by Karen Hobbs (“Appeal”), which requests reversal of the decision by the Fairfax County Local Board of Building Code Appeals (“LBBCA”) that upheld Notices of Violation issued by Catherine Lunsford (“Lunsford”), Investigator, Fairfax County Department of Code Compliance. The written record that was before the LBBCA, which includes submissions from Karen Hobbs (“Hobbs”) and the Code Official, is attached hereto as Exhibit 1.

BACKGROUND

On October 4, 2018, Lunsford¹ attempted an inspection of the condominium located at 11812 Breton Court, Reston, Virginia (the “Property”), which is owned by Hobbs. She was not permitted to perform the inspection on that date, but at Hobbs’ request, Lunsford returned to the Property on October 5, 2018. On that date, Lunsford was admitted into the Property by Hobbs and performed an interior inspection. At Hobbs’ request, Lunsford did not inspect the bathroom or the bedroom. A table summarizing Lunsford’s attempted and successful inspections (“Inspection Table”) of the Property, which is based on her inspection logs is attached hereto as

¹ Investigator Lunsford was accompanied by various County personnel during her inspections of the Property. This brief refers only to Lunsford’s actions and observations, but the attached Inspection Table identifies other persons who were present during each inspection.

Exhibit 2, and includes corresponding photographs. Lunsford was never asked by Hobbs to not take photographs during the October 5, 2018, inspection.²

Based on the results of the October 5, 2018, inspection, Lunsford issued a Notice of Violation (the “VMC Notice of Violation”) for violating Virginia Property Maintenance Code (“VMC”) §§ 305.1, 308.1, and 702.1. Those VMC provisions provide as follows:

1. § 305.1 – The interior of a structure and equipment therein shall be maintained in good repair, structurally sound, and in sanitary condition.
2. 308.1 – Accumulation of rubbish or garbage. The interior of every structure shall be free from excessive accumulation of rubbish or garbage.
3. 702.1 – A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the Fire Code.

In addition to the VMC Notice of Violation, Lunsford issued a Notice of Structure Unfit for Human Occupancy to Hobbs and the Property was placarded. A structure is unfit for human occupancy if, in relevant part, “the existing structure is determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or public because of the degree to which the structure is in disrepair or lack maintenance.” VMC § 202. The VMC Notice of Violation and the Notice of Structure Unfit for Human Occupancy are collectively referred to as the “NOVs”.

Following the November 15, 2018, inspection, the placard barring Hobbs from occupying the Property was removed because sufficient egress had been reestablished.

² It should be noted that photographs included in the Appeal that do not include a date-stamp were taken by Hobbs, and were likely taken during re-inspection on November 15, 2018.

ARGUMENT

The Appeal should be denied and the NOV's should be upheld because the conditions of the interior of the structure on October 5, 2018, justified the determinations and requirements in the VMC Notice of Violation and the conditions were such that the Notice for Structure Unfit for Human Occupancy was properly issued.

The photographs taken by Lunsford support the conclusion that the Property was unsanitary³, rubbish and garbage had excessively accumulated within the home, and, as a result, no safe, continuous and unobstructed path of travel to a public way existed. Each condition constitutes a violation of VMC §§ 305.1, 308.1, and 702.1, respectively, as identified in the VMC Notice of Violation. In addition to the photographs, which provide a visual summary of the inspection, Lunsford experienced an intense smell of ammonia when approaching the Property and, once inside, it was exponentially worse.⁴ This is additional evidence of the unsanitary condition of the Property.

The Notice of Structure Unfit for Human Occupancy was justified based on the obstructed egress and lack of sanitation of the Property. In the event of an emergency, the obstructed egress could prevent Ms. Hobbs from escaping the Property or prevent emergency responders from accessing the Property or moving within it, which poses a danger to Ms. Hobbs and the public.

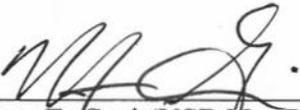
CONCLUSION

For the reasons set forth above, the Code Official, by counsel, respectfully requests that the State Technical Review Board deny the Appeal and uphold the decision of the LBBCA.

³ Urine and feces were found on the floor.

⁴ Lunsford attested to the smell during her testimony to the LBBCA.

ELIZABETH D. TEARE
COUNTY ATTORNEY

By  _____

Marc E. Gori (VSB No. 74926)

Assistant County Attorney

12000 Government Center Parkway, Suite 549

Fairfax, Virginia 22035-0064

(703) 324-2421 (tel.); (703) 324-2665 (fax)

marc.gori@fairfaxcounty.gov

Counsel for the Property Maintenance Code Official for Fairfax County, Virginia



County of Fairfax, Virginia

MEMORANDUM

STAFF MEMORANDUM TO THE LOCAL BOARD OF BUILDING AND FIRE CODE APPEALS

HEARING DATE: November 14, 2018

APPELLANT: Karen E. Hobbs (Property Owner)

SUBJECT PROPERTY: 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

CODE: 2015 Virginia Maintenance Code

INVESTIGATOR: S. C. Lunsford
Department of Code Compliance

DCC CASE #: #: 201806838 **SR#:** 155372

Staff respectfully recommends that the Fairfax County Board of Building and Fire Code Appeals (Board) uphold the determination in the Notice of Violation and Notice of Structure Unfit for Human Occupancy that the subject property is in violation of the Virginia Maintenance Code.

Staff Position

In response to a complaint, an inspection of the referenced property was conducted. During the inspection, the Department of Code Compliance Investigator observed the following violations of the Virginia Maintenance Code, and issued a Notice of Violation:

- Sect. 305.1, Interior Structure General
- Sect. 308.1, Accumulation of Rubbish and Garbage
- Sect. 702.1, Means of Egress General

A Notice of Structure Unfit for Human Occupancy was also issued.

A copy of the Notice of Violation and Notice of Structure Unfit for Human Occupancy, which describe the violations, and photos from the inspection, are attached.

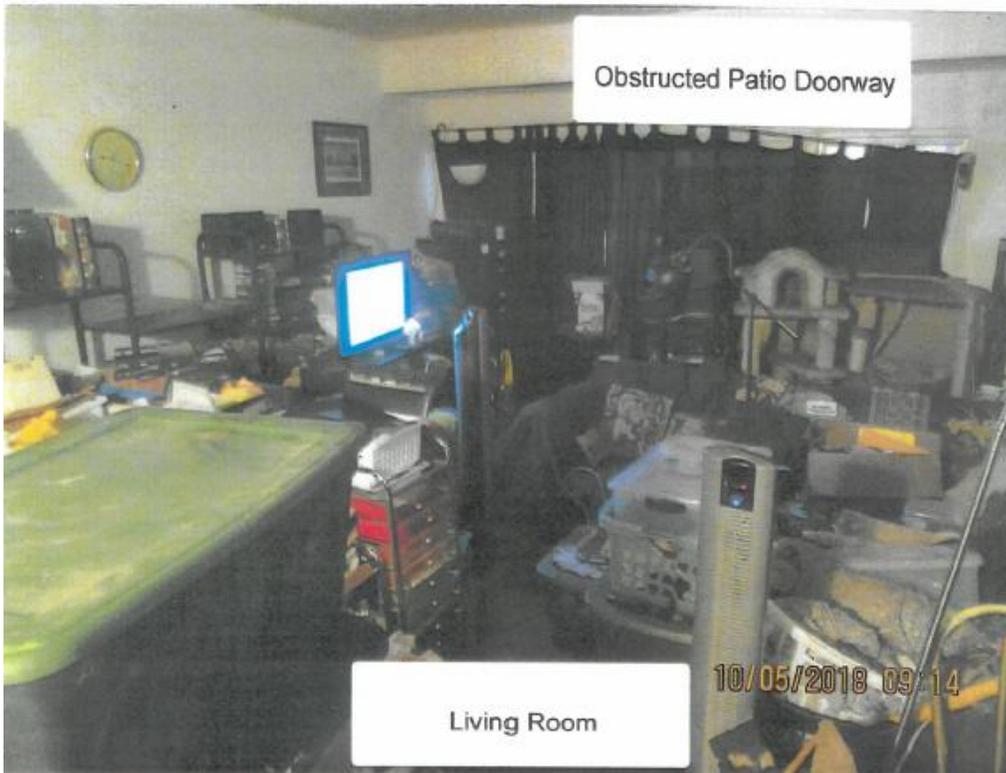
Appellant Position

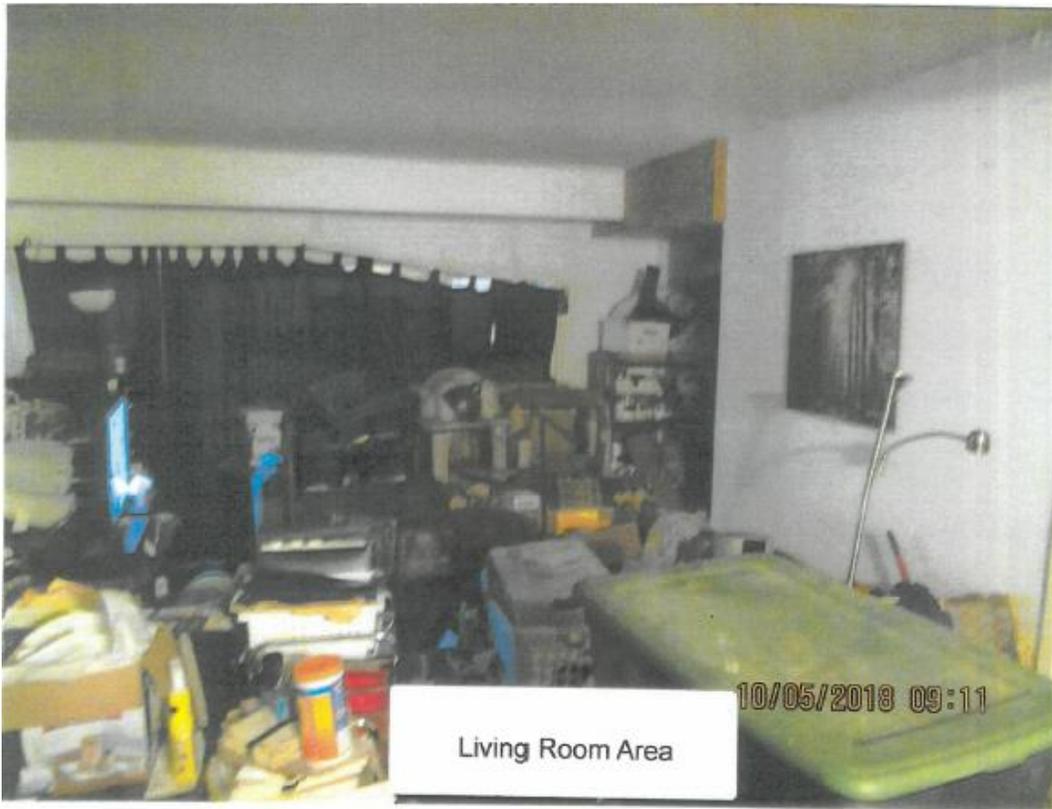
The appellant's appeal application is attached.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, VA 22035-5508
Phone 703-324-1300

EXHIBIT

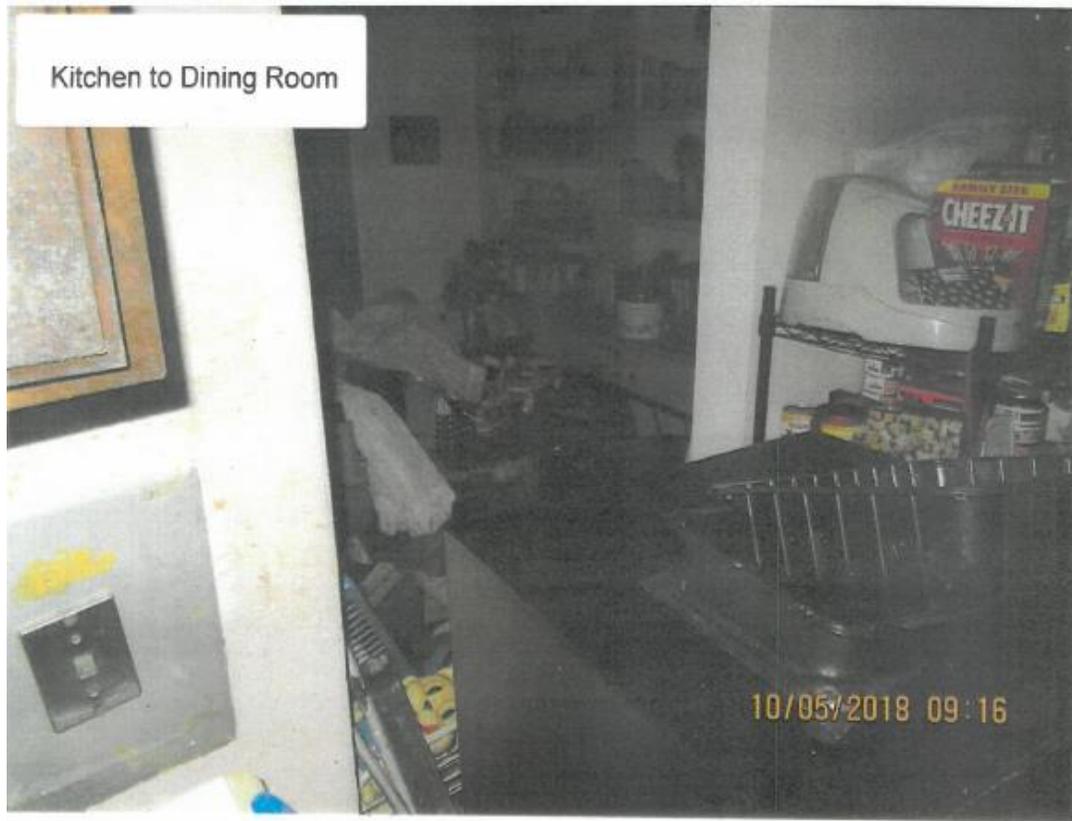
115



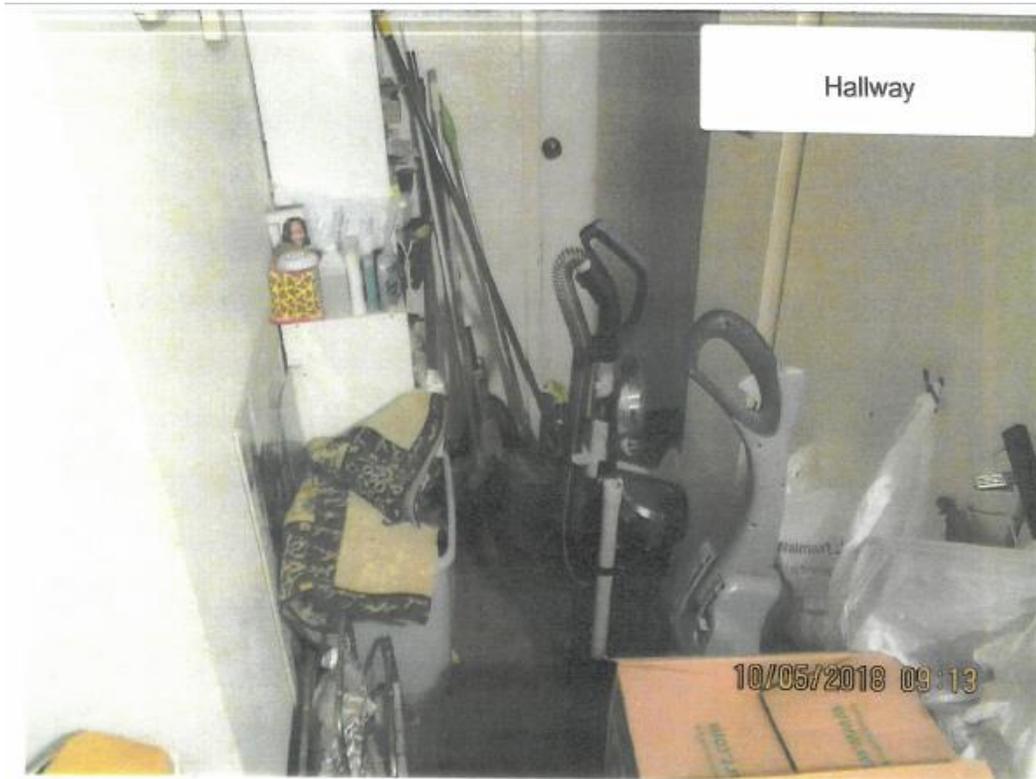
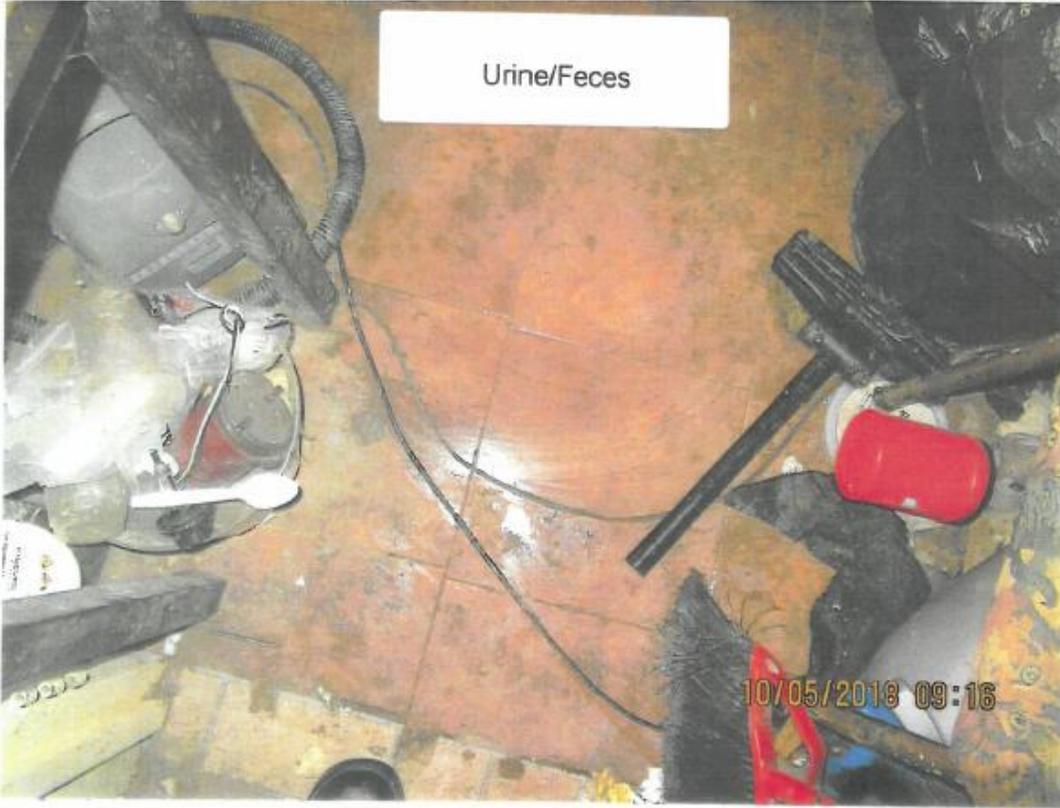




Kitchen



Kitchen to Dining Room



Patio Entry to Dwelling



USE PROHIBITED - EVACUATION NOTICE
THIS STRUCTURE IS UNSAFE/UNFIT FOR HABITATION

USE OF OCCUPANCY HAS BEEN PROHIBITED BY THE Fire Marshal Building Official Maintenance Person

FOR THE Virginia Statewide Fire Prevention Code Virginia Construction Code Virginia Maintenance Code
 Virginia Existing Building Code

No person shall enter, occupy or use this structure, except as authorized by the code official or designer, for more inspections, or modifications, needed to be brought into compliance with the applicable codes. Any person who enters this structure in violation of this notice shall be deemed to be in violation of the applicable Virginia Statewide Building Code, the Virginia Statewide Fire Prevention Code 102-110.2, 120-101 and/or other applicable codes.

THIS PLACARD SHALL NOT BE ALTERED, REMOVED OR DEFACED UNDER PENALTY OF LAW WITHOUT APPROPRIATE AUTHORIZATION.

Street address (including all specific portion thereof): 11812 BERTON CT, UNIT 2, RESTON, VA 20191

Description and nature of conditions: LACK OF SANITATION (VMC 305.1 - INTERIOR SUPPLIES)
INSTRUCTED EXPRESS (VMC 702.1 - MEANS OF EGRESS)

Issuing Agency	Address	Telephone
Fire and Rescue Department	12000 Commonwealth Center Plaza, Suite 2000	703-327-4800 / 774-721
Fire Marshal's Office	Reston, VA 20190	
Local Development Services	12000 Commonwealth Center Plaza, Suite 2000	703-327-4800 / 774-721
Issuing Official or Designer	Reston, VA 20190	
Department of Code Enforcement	12000 Commonwealth Center Plaza, Suite 2000	703-327-4800 / 774-721
Issuing Official or Designer	Reston, VA 20190	

Prepared by: John Linketto (703) 327-4800

NO ONE SHALL ENTER OR OCCUPY THIS STRUCTURE UNTIL THE ISSUING AGENCY HAS BEEN ADVISED BY THE ISSUING AGENCY THAT THE STRUCTURE IS SAFE FOR OCCUPANCY.

10/05/2018 09:48



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

NOTICE OF STRUCTURE UNFIT FOR HUMAN OCCUPANCY

DATE OF ISSUANCE: October 10, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Karen E. Hobbs (Property Owner)
ADDRESS: 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

**LOCATION OF VIOLATION/
SUBJECT PROPERTY:** 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

TAX MAP REF: 0261 19120002B

CASE #: 201806838 **SR#:** 155372

ISSUING INVESTIGATOR: S. C. Lunsford, Ph: (703) 324-4374

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code - 2015 Edition), an inspection of the condominium unit located on the above-referenced subject property was conducted on October 5, 2018. The inspection found that this structure is unfit because of lack of sanitation and obstructed egress on the interior. Therefore, the Fairfax County Maintenance Code Official (Code Official) has deemed this structure to be a Structure Unfit for Human Occupancy, which is defined in Section 202 of the Virginia Maintenance Code as:

STRUCTURE UNFIT FOR HUMAN OCCUPANCY:

An existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-9346
www.fairfaxcounty.gov/code

Karen E. Hobbs
October 10, 2018
SR 155372
Page 2

equipment or (ii) the required plumbing, and sanitary facilities are inoperable.

A Field Notice of Structure Unfit for Human Occupancy was issued to you and/or posted to the subject property on October 5, 2018 because the property condition required immediate attention; and, pursuant to the provisions of Section 106.6 of the Virginia Maintenance Code, a placard stating the following has been posted to the entrance to the structure:

THIS STRUCTURE IS UNFIT FOR HUMAN OCCUPANCY AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL

The subject structure must remain vacant. No person shall enter the structure except upon the authorization of the Code Official for one of the following purposes: (a) to make the required repairs, (b) to demolish the structure, or (c) to make inspections. The placard shall not be removed until the structure is determined by the Code Official as safe to occupy.

You are hereby directed to abate the conditions found at the subject property by complying with the attached Notice of Violation.

Pursuant to Section 106.9 of the Virginia Maintenance Code, the Code Official may authorize emergency repairs to make the structure temporarily safe, whether or not legal action to compel compliance has been instituted. You will be billed if such work is done.

Per Sect. 107.5 of the Virginia Maintenance Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 14 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Secretary to the Fairfax County Local Board of Building Code Appeals
Attention: Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Virginia 22035-5504
Telephone: (703) 324-5175, TTY 711

Information and forms can also be obtained at:
<https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Please give this matter your immediate attention and should you have any questions, please contact me at (703) 324-4374.

Karen E. Hobbs
October 10, 2018
SR 155372
Page 3

LEGAL NOTICE ISSUED BY:



Signature

S. C. Lunsford
Code Compliance Investigator
Ph: (703) 324-4374
catherine.lunsford@fairfaxcounty.gov

PERSONAL SERVICE _____
 Being unable to make personal service a copy was delivered in the following manner:
 Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
 Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

 Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).
 Served on a Secretary of the Commonwealth.
 Not found.
T. Ayoub 0771
SERVING OFFICER
10-10-18 Stacey A. Kincaid, Sheriff
DATE Fairfax County, VA

PERSONAL SERVICE _____
 Being unable to make personal service a copy was delivered in the following manner:
 Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
 Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

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 Served on a Secretary of the Commonwealth.
 Not found.
SERVING OFFICER
for _____
DATE

PERSONAL SERVICE _____
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 Served on a Secretary of the Commonwealth.
 Not found.
SERVING OFFICER
for _____
DATE

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 Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

 Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).
 Served on a Secretary of the Commonwealth.
 Not found.
SERVING OFFICER
for _____
DATE



FILE COPY

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

NOTICE OF STRUCTURE UNFIT FOR HUMAN OCCUPANCY

DATE OF ISSUANCE: October 10, 2018

METHOD OF SERVICE: CERTIFIED MAIL # 7018 0040 0000 7459 4296

LEGAL NOTICE ISSUED TO: Karen E. Hobbs (Property Owner)
ADDRESS: 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

**LOCATION OF VIOLATION/
SUBJECT PROPERTY:** 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

TAX MAP REF: 0261 19120002B

CASE #: 201806838 **SR#:** 155372

ISSUING INVESTIGATOR: S. C. Lunsford, Ph: (703) 324-4374

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code - 2015 Edition), an inspection of the condominium unit located on the above-referenced subject property was conducted on October 5, 2018. The inspection found that this structure is unfit because of lack of sanitation and obstructed egress on the interior. Therefore, the Fairfax County Maintenance Code Official (Code Official) has deemed this structure to be a Structure Unfit for Human Occupancy, which is defined in Section 202 of the Virginia Maintenance Code as:

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Karen E. Hobbs
October 10, 2018
SR 155372
Page 2

equipment or (ii) the required plumbing, and sanitary facilities are inoperable.

A Field Notice of Structure Unfit for Human Occupancy was issued to you and/or posted to the subject property on October 5, 2018 because the property condition required immediate attention; and, pursuant to the provisions of Section 106.6 of the Virginia Maintenance Code, a placard stating the following has been posted to the entrance to the structure:

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You are hereby directed to abate the conditions found at the subject property by complying with the attached Notice of Violation.

Pursuant to Section 106.9 of the Virginia Maintenance Code, the Code Official may authorize emergency repairs to make the structure temporarily safe, whether or not legal action to compel compliance has been instituted. You will be billed if such work is done.

Per Sect. 107.5 of the Virginia Maintenance Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 14 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

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Attention: Secretary to the Fairfax County Local Board of Building Code Appeals
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12055 Government Center Parkway, Suite 334
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Telephone: (703) 324-5175, TTY 711

Information and forms can also be obtained at:
<https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Please give this matter your immediate attention and should you have any questions, please contact me at (703) 324-4374.

Karen E. Hobbs
October 10, 2018
SR 155372
Page 3

LEGAL NOTICE ISSUED BY:



Signature

S. C. Lunsford
Code Compliance Investigator
Ph: (703) 324-4374
catherine.lunsford@fairfaxcounty.gov



County of Fairfax, Virginia

DCC RETURN COPY

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Maintenance Code

DATE OF ISSUANCE: October 10, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Karen E. Hobbs
ADDRESS: 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

LOCATION OF VIOLATIONS: 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

TAX MAP REF: 0261 19120002B

CASE #: 201806838 **SR #:** 155372

ISSUING INVESTIGATOR: S. C. Lunsford, Ph: (703) 324-4374

POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

CODE § 61-7-1(B):	Maintenance Code Violation(s)	First Offense	Each Subsequent Offense
	§ VMC 305.1	\$ 100.00	\$ 150.00
	§ VMC 308.1	\$ 100.00	\$ 150.00
	§ VMC 702.1	\$ 100.00	\$ 150.00
TOTAL:		\$ 300.00	\$ 450.00

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code-2015 Edition), an inspection on October 5, 2018 revealed violations as listed below at the referenced location. The cited violations must be corrected within thirty (30) days from receipt of this notice unless otherwise indicated.

Violation: INTERIOR STRUCTURE GENERAL VMC 305.1. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound, and in a sanitary condition.

Location: 11812 Breton Court, Unit 2, Reston, Virginia- Interior of dwelling unit.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Karen E. Hobbs
October 10, 2018
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Page 2

Work to be Performed: Restore interior of dwelling to sanitary condition so as to be in substantial conformance with VMC 305.1.

Violation: ACCUMULATION RUBBISH GARBAGE VMC 308.1. Accumulation of rubbish or garbage. The interior of every structure shall be free from excessive accumulation of rubbish or garbage.

Location: 11812 Breton Court, Unit 2, Reston, Virginia- Interior of dwelling unit.

Work to be Performed: Remove excessive rubbish and garbage from interior of dwelling so as to be in substantial conformance with VMC 308.1.

Violation: MEANS OF EGRESS GENERAL VMC 702.1. A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the International Fire Code.

[F] 1001.1- Building or portions thereof shall be provided with a means of egress system as required by this chapter. The provisions of this chapter shall control the design, construction, and arrangement of means of egress components required to provide an approved means of egress from structures and portions thereof. Sections 1003 through 1029 shall apply to new construction. Section 1030 shall apply to existing buildings.

Exception - Detached one and two family dwelling and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with separate means of egress and their accessory structures shall comply with the International Residential Code.

[R] 311.1 Means of Egress - All dwellings shall be provided with a means of egress as provided in this sections. The means of egress shall provide a continuous and unobstructed path of vertical and horizontal egress from all portions of the dwelling to the exterior of the dwelling at the required egress door without requiring travel through a garage.

Location: 11812 Breton Court, Unit 2, Reston, Virginia- Interior of dwelling unit.

Work to be Performed: Establish unobstructed egress throughout dwelling unit so as to be in substantial conformance with VMC 702.1.

All repairs, alterations, and/or additions must be made in accordance with applicable laws. Any additional violations that may appear as work progresses will require correction.

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Per Sect. 107.5 of the Virginia Maintenance Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 14 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

Karen E. Hobbs
October 10, 2018
SR 155372
Page 3

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Secretary to the Fairfax County Local Board of Building Code Appeals
Attention: Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, VA 22035-5504
Telephone: (703) 324-5175, TTY 711

Information and forms can also be obtained at:
<https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>

A follow-up inspection will be made at the expiration of the time period outlined in this Notice.

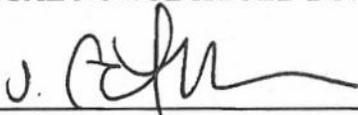
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Civil penalties entered by the General District Court shall be paid to the Office of the County Attorney. Investigators may not accept any payments, including those associated with fines and fees.

In accordance with the code, the owner or person to whom this notice of violation has been issued is responsible for contacting me within the time frame established for any re-inspections to assure the violations have been corrected.

If you have any questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703) 324-4374. For any other questions, contact our main office at (703) 324-1300, TTY 711.

LEGAL NOTICE ISSUED BY:



Signature

S. C. Lunsford
Code Compliance Investigator
Ph: (703) 324-4374
catherine.lunsford@fairfaxcounty.gov

PERSONAL SERVICE _____
 Being unable to make personal service a copy was delivered in the following manner:
 Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
 Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

 Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).
 Served on a Secretary of the Commonwealth.
 Not found.

T. Ayoub 0771
SERVING OFFICER
10-10-18 Stacey A. Kincaid, Sheriff
DATE Fairfax County, VA

PERSONAL SERVICE _____
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 Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
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SERVING OFFICER
for _____
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SERVING OFFICER
for _____
DATE



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

FILE COPY

NOTICE OF VIOLATION Virginia Maintenance Code

DATE OF ISSUANCE: October 10, 2018

METHOD OF SERVICE: CERTIFIED MAIL # 7018 0360 0001 8610 5008

LEGAL NOTICE ISSUED TO: Karen E. Hobbs
ADDRESS: 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

LOCATION OF VIOLATIONS: 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212.

TAX MAP REF: 0261 19120002B

CASE #: 201806838 **SR #:** 155372

ISSUING INVESTIGATOR: S. C. Lunsford, Ph: (703) 324-4374

POTENTIAL CIVIL PENALTIES PURSUANT TO FAIRFAX COUNTY

CODE § 61-7-1(B):	Maintenance Code Violation(s)	First Offense	Each Subsequent Offense
	§ VMC 305.1	\$ 100.00	\$ 150.00
	§ VMC 308.1	\$ 100.00	\$ 150.00
	§ VMC 702.1	\$ 100.00	\$ 150.00
TOTAL:		\$ 300.00	\$ 450.00

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code-2015 Edition), an inspection on October 5, 2018 revealed violations as listed below at the referenced location. The cited violations must be corrected within thirty (30) days from receipt of this notice unless otherwise indicated.

Violation: INTERIOR STRUCTURE GENERAL VMC 305.1. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound, and in a sanitary condition.

Location: 11812 Breton Court, Unit 2, Reston, Virginia- Interior of dwelling unit.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Karen E. Hobbs
October 10, 2018
SR 155372
Page 2

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Karen E. Hobbs
October 10, 2018
SR 155372
Page 3

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Land Development Services
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Civil penalties entered by the General District Court shall be paid to the Office of the County Attorney. Investigators may not accept any payments, including those associated with fines and fees.

In accordance with the code, the owner or person to whom this notice of violation has been issued is responsible for contacting me within the time frame established for any re-inspections to assure the violations have been corrected.

If you have any questions, would like to schedule an appointment to meet with an investigator, or schedule a follow up inspection, please contact me directly at (703) 324-4374. For any other questions, contact our main office at (703) 324-1300, TTY 711.

LEGAL NOTICE ISSUED BY:



Signature

S. C. Lunsford
Code Compliance Investigator
Ph: (703) 324-4374
catherine.lunsford@fairfaxcounty.gov



Building Code Appeal Request

18 1022.0AP

OCT 22 2018

PROJECT INFORMATION

Project Name: Hunters Woods Village Condominium
Project Address: 11812 Breton Ct, #2 Reston, VA 20191
Permit or case number: ~~201806888~~ 201806838 Tax map number: _____

APPLICANT INFORMATION

Applicant Name: Karen Hobbs Owner Owner's agent
Address: 11812 Breton Ct #2
City: Reston VA State: VA ZIP: 20191
Phone: 703 608-2605 Email: keh357@aol.com

OWNER INFORMATION

See applicant information
Owner Name: Same
Address: _____
City: _____ State: _____ ZIP: _____
Phone: _____ Email: _____

APPEAL INFORMATION

Appealing decision made on the date of by Building Official Fire Official Property Maintenance Official
rendered on the following date: 10/10/18
Code(s) (IBC) IMC, IPMC, etc. and year-edition: 2015 edition
Section(s): VMC 305.1, 308.1, 702.1 / Notice of Structure
unit for Human Occupancy

REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:

Please return the completed form and any supporting documentation to the address or email below. A \$208 fee is required at the time of submittal. The application will not be further processed until this fee has been collected.

Chairman, Fairfax County Board of Building Code Appeals
12055 Government Center Parkway, Suite 334
Fairfax, VA 22035-5504
Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County.

NOTICE OF STRUCTURE UNFIT FOR HUMAN OCCUPANCY

DATE OF ISSUANCE: October 10, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Karen E. Hobbs (Property Owner)
ADDRESS: 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

**LOCATION OF VIOLATION/
SUBJECT PROPERTY:** 11812 Breton Court, Unit 2
Reston, Virginia 20191-3212

TAX MAP REF: 0261 19120002B

CASE #: 201806838 **SR#:** 155372

ISSUING INVESTIGATOR: S. C. Lunsford, Ph: (703) 324-4374

Dear Responsible Party:

In accordance with the Virginia Maintenance Code (Part III of the Uniform Statewide Building Code - 2015 Edition), an inspection of the condominium unit located on the above-referenced subject property was conducted on October 5, 2018. The inspection found that this structure is unfit because of lack of sanitation and obstructed egress on the interior. Therefore, the Fairfax County Maintenance Code Official (Code Official) has deemed this structure to be a Structure Unfit for Human Occupancy, which is defined in Section 202 of the Virginia Maintenance Code as:

STRUCTURE UNFIT FOR HUMAN OCCUPANCY:

An existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 FAX 703-324-9346
www.fairfaxcounty.gov/code

Karen E. Hobbs
October 10, 2018
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equipment or (ii) the required plumbing, and sanitary facilities are inoperable.

A Field Notice of Structure Unfit for Human Occupancy was issued to you and/or posted to the subject property on October 5, 2018 because the property condition required immediate attention; and, pursuant to the provisions of Section 106.6 of the Virginia Maintenance Code, a placard stating the following has been posted to the entrance to the structure:

THIS STRUCTURE IS UNFIT FOR HUMAN OCCUPANCY AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL

The subject structure must remain vacant. No person shall enter the structure except upon the authorization of the Code Official for one of the following purposes: (a) to make the required repairs, (b) to demolish the structure, or (c) to make inspections. The placard shall not be removed until the structure is determined by the Code Official as safe to occupy.

You are hereby directed to abate the conditions found at the subject property by complying with the attached Notice of Violation.

Pursuant to Section 106.9 of the Virginia Maintenance Code, the Code Official may authorize emergency repairs to make the structure temporarily safe, whether or not legal action to compel compliance has been instituted. You will be billed if such work is done.

Per Sect. 107.5 of the Virginia Maintenance Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 14 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

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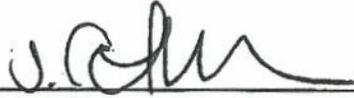
Secretary to the Fairfax County Local Board of Building Code Appeals
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Telephone: (703) 324-5175, TTY 711

Information and forms can also be obtained at:
<https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Please give this matter your immediate attention and should you have any questions, please contact me at (703) 324-4374.

Karen E. Hobbs
October 10, 2018
SR 155372
Page 3

LEGAL NOTICE ISSUED BY:



Signature

S. C. Lunsford
Code Compliance Investigator
Ph: (703) 324-4374
catherine.lunsford@fairfaxcounty.gov





County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Maintenance Code

DATE OF ISSUANCE: October 10, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

**LEGAL NOTICE ISSUED TO:
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11812 Breton Court, Unit 2
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TOTAL:		\$ 300.00	\$ 450.00

Dear Responsible Party:

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Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
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Work to be Performed: Restore interior of dwelling to sanitary condition so as to be in substantial conformance with VMC 305.1.

Violation: ACCUMULATION RUBBISH GARBAGE VMC 308.1. Accumulation of rubbish or garbage. The interior of every structure shall be free from excessive accumulation of rubbish or garbage.

Location: 11812 Breton Court, Unit 2, Reston, Virginia- Interior of dwelling unit.

Work to be Performed: Remove excessive rubbish and garbage from interior of dwelling so as to be in substantial conformance with VMC 308.1.

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Karen E. Hobbs
October 10, 2018
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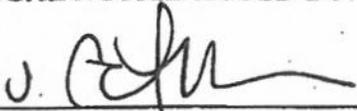
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S. C. Lunsford
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October 10, 2018
SR 155372
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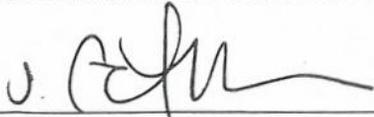
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catherine.lunsford@fairfaxcounty.gov

Date	Activity	Outcome
October 4, 2018	Responded to the property with Fairfax County Animal Protection Police (APP) Officer J. McLemore. The property is a condominium located at 11812 Breton Court. Investigation in response to complaints of potent, noxious odor originating from the property and permeating neighboring units and the building common area.	I and Officer McLemore noted a potent odor while walking from the parking lot area to the condo unit.
October 4, 2018	While walking towards the building Officer McLemore and I observed an adult female exiting the property. The individual was positively identified as the property owner, Ms. Karen Hobbs.	Officer McLemore and I approached Ms. Hobbs, who had just exited the unit to walk her dog. We introduced ourselves and explained that the County had received a complaint about the conditions inside her unit, which could constitute life safety risk for her and her animals. We asked Ms. Hobbs for permission to do an interior inspection. Ms. Hobbs stated that she was on her way to an appointment and had left a note on the door for the Animal Protection Police. We advised her that we would return to the property later in the afternoon to talk with her so that she would not miss her appointment.
October 4, 2018	Officer McLemore and I proceeded to the property door to retrieve the "note" Ms. Hobbs advised she left for the APP.	The odor, which was ammonia in nature, became stronger as we approached the unit. The odor was strongest at the unit entrance, indicating that the unit was the source of the smell.
October 4, 2018	Follow-up inspection attempt. Officer McLemore and I returned to the subject property in the late afternoon, as we had previously advised Ms. Hobbs.	Officer McLemore and I knocked on the door to the subject property but received no answer.
October 4, 2018	Contacted property manager Keith Elliott, from Legum & Norman.	Mr. Elliott reached out to association counsel who advised that under emergent circumstances, management may make entry to a unit. Association counsel determined that the alleged circumstances, including the potent ammonia odor described, did constitute an

Date	Activity	Outcome
October 4, 2018	Waiting for Mr. Elliott and the locksmith to respond to the property, Ms. Hobbs returned home.	emergent situation and advised Mr. Elliott to respond to the property with a locksmith. The decision to request a locksmith was made by the condo management company.
October 4, 2018	Ongoing discussions with Ms. Hobbs	Ms. Hobbs returned home. Officer McLemore and I approached Ms. Hobbs and explain that we had received a complaint and needed to do an inspection to determine that the conditions inside her unit were safe for both her, her animals, and the occupants of the neighboring units. Ms. Hobbs immediately became verbally combative. We advised Ms. Hobbs that due to the severity of the concern, management had hired a locksmith, who was en route to the property. Repeatedly, we explained to Ms. Hobbs that our intention to ensure that the conditions inside her property were safe for her, her animals, and the occupants of neighboring units in her building.
October 4, 2018	Arrival of Mr. Elliott and a locksmith.	Officer McLemore and I explained that a potent ammonia odor was coming from her unit and could be observed from the right-of-way. We also explained that in plain view from the rear of the property, it appeared that the interior of the dwelling was heavily cluttered with junk and debris. The patio located on the rear of the property also contained a substantial amount of junk and debris. Ms. Hobbs stated that the odor was coming from the trash room located across the hall from her unit or from a drain located in the floor in the common area. Officer McLemore and I, along with Ms. Hobbs and a second DCC Investigator (W. Moncure) walked to both the trash room and the drain in the floor to observe what Ms. Hobbs claimed was the cause of the odor. No odor was noted in either location. Of note, another resident in the building had installed a plug-in air freshener next to Ms. Hobbs front door because the odor was so noxious.
October 4, 2018	Arrival of Mr. Elliott and a locksmith.	Mr. Elliott explained to Ms. Hobbs that management was responding to the property because the odor originating from her unit, and that he believed conditions constituted an emergent situation. He requested that she allow him access to the unit so that he could determine the conditions. Ms. Hobbs refused. For a significant period of time, Mr.

Date	Activity	Outcome
October 4, 2018	Continuing negotiations with Ms. Hobbs	Elliott and County personnel tried to reason with Ms. Hobbs about the need to ensure that her condo was not a danger. Eventually, Mr. Elliott summoned the locksmith to gain entry to the unit. Ms. Hobbs physically placed her body in front of the entry to the dwelling preventing the locksmith from making entry.
October 4, 2018	Agreement to schedule an interior inspection reached	After several hours of discussion, Ms. Hobbs agreed to provide management and County personnel photographs of the interior. Ms. Hobbs entered her unit and provided five photographs of things such as a wall, a television set, etc. The photographs provided no information about the conditions of the interior of the property.
October 4, 2018	Inspection	Ms. Hobbs agreed to authorize an interior inspection the following morning at 0900 hours.
October 5, 2018	Unit placarded as unfit for human occupancy. The cause for	I, Department of Code Compliance Investigator Matt Stenger, and Keith Elliott arrived at the Property. Ms. Hobbs granted us access to her unit but advised that the bathroom and bedroom areas were “off limits.” No entry was made to either area. The ammonia odor within the dwelling was so potent that it was difficult to breathe. The unit was found to be heavily cluttered with miscellaneous junk and debris. Urine and feces were observed on the living room floor—Ms. Hobbs claimed at the time that the items were “disintegrated cardboard” but states in this appeal that they were “chips in the tile.” The dining room area was so filled with miscellaneous junk and debris that access was unobtainable. Kitchen facilities were severely unsanitary. Due to the volume of debris in the kitchen area the ability to utilize the facilities as designed was significantly compromised. Access to the patio egress door was significantly compromised by accumulated debris. Photographs were collected of the interior—though Ms. Hobbs alleges that she was unaware, she was advised at the start of the inspection that photographs would be taken to document the conditions inside the unit.
October 5, 2018	Placards were placed on the front and rear entries to the dwelling. Ms. Hobbs was advised that she may enter the dwelling for the purpose of	Ms. Hobbs was advised that she may enter the dwelling for the purpose of

Date	Activity	Outcome
	<p>placarding was specifically related to the severe lack of sanitation and obstructed egress inside the dwelling.</p>	<p>repairs during daylight hours only. Ms. Hobbs contested and explained that due to the nature of her employment, she needed to be able to access the dwelling in the evening hours. I advised Ms. Hobbs that if she needed to briefly access the property when she returned from work to retrieve items, etc. that would be okay but reiterated that she could not be in the property overnight or for living purposes. Attachment 1 – Photographs taken by Lunsford</p>
<p>October 7, 2018</p>	<p>Call from a FCPD officer.</p>	<p>Police Officer reported that Ms. Hobbs was in her condo, and he was prepared to take her to the Fairfax County Adult Detention Center for violating the placard. I advised the officer that Ms. Hobbs must have been confused about the terms of the placard and that I would make contact with her the following morning. I requested that he not transport Ms. Hobbs to the ADC and he obliged.</p>
<p>October 7, 2018</p>	<p>Attempt to visit Ms. Hobbs.</p>	<p>We were unable to make contact with Ms. Hobbs. In order to avoid future confusion, placards were reissued allowing access to the property between 0700 and 2000 hours, daily. A voice mail was left for Ms. Hobbs and in a subsequent telephone conversation Ms. Hobbs was advised of the specific parameters outlined on the posted placards.</p>
<p>Ongoing</p>	<p>Ongoing attempts to gain compliance.</p>	<p>County personnel and management plead with Ms. Hobbs to work with them to make progress in clearing the cited violations so that the placards can be removed so that she can occupy her condo. Ms. Hobbs continues to argue that there is no issue with her unit.</p>

Date	Activity	Outcome
November 15, 2018	Follow-up inspection.	<p>Ms. Hobbs authorized a voluntary inspection to determine the status of repairs to the cited violations. I and a second member of DCC staff (C. Fitzhugh) inspected the property and found significant improvement towards compliance had been made. An ammonia odor was still noted but was not as potent. Egress had been established throughout. Conditions warranted removal of the placard. No photographs were taken of the interior of the property at the Ms. Hobbs' request. Ms. Hobbs did authorize photographs to be taken of the front and rear entrances to the unit documenting that the placards had been removed. Attachment 2- Exterior Photographs</p>















USE PROHIBITED - EVACUATION NOTICE
THIS STRUCTURE IS UNSAFE/UNFIT FOR HABITATION

ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE Fire Marshal Building Official Insurance Code Official
 PER THE Virginia Statewide Fire Prevention Code Virginia Construction Code
 Virginia Existing Building Code Virginia Maintenance Code

No person shall enter, occupy or use this structure, except as authorized by the code official, or designee, to make inspections, to address structural repairs or to demolish the building. Any person who enters this structure in violation of this notice may be prosecuted for violation of the Virginia Uniform Statewide Building Code, the Virginia Statewide Fire Prevention Code (§§ 110.5, 120.5) and/or for trespassing.

THIS PLACARD SHALL NOT BE ALTERED, REMOVED OR DECEASED UNDER PENALTY OF LAW WITHOUT APPROPRIATE AUTHORIZATION.

Street address (building or specific portion thereof) 11812 SPETH CT, UNIT 2, FORTY, VA 22191

Description and nature of condition: LACK OF SANITATION (VMC 305.1- INTERIOR SURFACES)
OBSTRUCTED EGRESS (VMC 702.1- MEANS OF EGRESS)

Agency	Address	Telephone
1 Fire and Rescue Department	1100 Commonwealth Center Plaza, Suite 1100 Forty, VA 22191	703.224.4000, 774.712
2 Fire Department	1100 Commonwealth Center Plaza, Suite 1100 Forty, VA 22191	703.224.4000, 774.712
3 Local Government Building	1100 Commonwealth Center Plaza, Suite 1100 Forty, VA 22191	703.224.4000, 774.712
4 Department of Code Enforcement	1100 Commonwealth Center Plaza, Suite 1100 Forty, VA 22191	703.224.4000, 774.712

Issued by this authority on 10/05/2018 at 09:46 by DAVID HARRIS

DO NOT REMOVE THIS PLACARD UNTIL YOU HAVE BEEN ADVISED BY THE ISSUING AGENCY



USE PROHIBITED - EVACUATION NOTICE
THIS STRUCTURE IS UNSAFE/UNFIT FOR HABITATION

THE USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE: Fire Marshal Building Official Maintenance Code Official
 PER THE: Virginia Statewide Fire Prevention Code Virginia Construction Code Virginia Maintenance Code
 Virginia Existing Building Code

Workman shall enter, occupy or use this structure, except as authorized by the code official, or designer, to make inspections, to perform repair, repairs or to demolish the building. Any person who enters this structure in violation of this notice may be prosecuted for violation of the State Uniform Fireworks Building Code, the Virginia Statewide Fire Prevention Code (16.1-10.5, 112.8) and/or for trespassing.

THIS PLACARD SHALL NOT BE ALTERED, REMOVED OR DEFACED UNDER PENALTY OF LAW WITHOUT APPROPRIATE AUTHORIZATION

Street address (building or specific portion thereof): 11812 BRETTON CT, UNIT 2, RESTON, VA 20191

Description and scope of conditions: LACK OF SANITATION (VMC 305.1 - INTERIOR SURFACES),
OBSTRUCTED EGRESS (VMC 702.1 - MEANS OF EGRESS)

Agency Name	Address	Telephone
<input type="checkbox"/> Fire and Rescue Department Fire Marshal or Designer	12095 Government Center Plaza, Suite 1000 Fairfax, VA 22035	703-314-4500, 774-1100
<input type="checkbox"/> Land Development Services Building Official or Designer	12095 Government Center Plaza, Suite 800 Fairfax, VA 22035	703-314-5200, 703-314-5111
<input checked="" type="checkbox"/> Department of Code Compliance Maintenance Official or Designer	12095 Government Center Plaza, Suite 1000 Fairfax, VA 22035	703-324-1300, 774-1100

Filed by (last and first name): S.C. LUNSFORD / 81-571-488 3-00 Date posted: 5 October 2018

⊕ WORKERS AND OTHER PERSONS WHO MAY ACCESS THIS STRUCTURE WITHOUT THE PERMISSION OF THE ISSUING AGENCY ARE PROHIBITED FROM ENTERING OR REMAINING IN THE STRUCTURE.

10/05/2018 09:48





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Additional Documents
and Written Arguments
Submitted by
Karen Hobbs

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Luter, William <travis.luter@dhcd.virginia.gov>

Appeal 18-21

Karen Hobbs <keh357@aol.com>

Fri, Feb 15, 2019 at 4:46 PM

To: William Luter <travis.luter@dhcd.virginia.gov>

My response to the brief From Fairfax county department of code compliance:

I did not request inspector Lunsford to come into my home. It was only under much duress due to Keith Elliot, the HOA property manager instructing a locksmith, Who he had brought with him, to go ahead and unlock /change the locks on my doors In order to enter my home that I allowed Ms Lunsford and Mr. Elliot to come in. And It was only so that they could tell that the older they described out in the hall was not coming from my condo.

However once inside, Ms Lunsford began wanting to go all over my home, Which did not Seem to have anything to do with odor In the hall outside my condo's Front door.

I stopped her Stating that she did not have a warrant. It was not until I got the results of FOIA requests that I had made when I saw photographs that I realized she had taken photographs - without asking! I was and am very angry about this and plan to explore if I have any legal recourse for that.

I have already submitted photographs of what my home usually looks like and while it is unfortunate that this Fairfax County dept of code compliance employee bulldozed her way in to my home at a time when I was not expecting company and had several projects going on so that my home was not as neat as it normally is. However there was nothing that rose to the level of violating property maintenance codes. There was nothing obstructing a path to the door that was not at best temporary, for example in the hallway - Once I put the vacuum and the floor cleaner in that closet and put away the brooms that were standing in the corner - there wouldn't be any issue, would there?

In the living room there were several baskets of laundry that I was working on which weren't going to be there for long. The Sliding glass door was not obstructed - there was merely one chair near the path to it which isn't usually there - it only had been moved there briefly.

None of these things are permanent and who is to say that if you didn't go into my neighbors condo there would not be similar Situations?

Moving these items probably took 15 minutes and were things I would've done anyway. They do not rise to the level of violating building codes.

As to her claims of unsanitary surfaces- they are not true. In the picture in which she implies that there is urine and feces that is not true. That was an area where I had some remodeling surprise supplies kept and that is clay powder, grayish in color which I had attempted to mop and was still damp. And the brown spots are merely chips in the tile. When might be a little piece of cardboard. But it was definitely not urine and feces! So this is another violation for which there is no evidence.

And there was no rubbish or garbage in my home those are my personal belongings.

I notice that after Miss Lunsford was at my property the day after my appeal at the local level she notes that the egress is improved, I believe. She does not mention the other violations so what does that mean?

There may be occasional odors in the hall however they come from the trash room. They do not emanate from my unit. Please note the inspection report which was done about a year earlier by Faith Price the homeowners association property manager which would be the equivalent of Keith Elliot. In it she states That inside you can tell there are pets however there is no odor outside which is coming from the unit.

So again Miss Lunsford gained the assistance of Keith Elliott to force me into allowing them into my unit based on the false claim that odor was coming from my unit!

I also will be faxing some photographs. Thank you,

Karen Hobbs

Sent from my iPhone

Why? ?
Obstructed Pathway



Entrance of laundry
Living Room

This has to do with the angle.
I have marked the area
in front of my computer



Obscured due to angle

Figure 3
Obstructed Pass Doorway



Figure 4
Entrance of laundry
area
Living Room

Moved from further down the counter - due to working on both Refrig and dishwasher. Temporarily



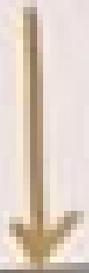
Kitchen

Not
UnneFaces !

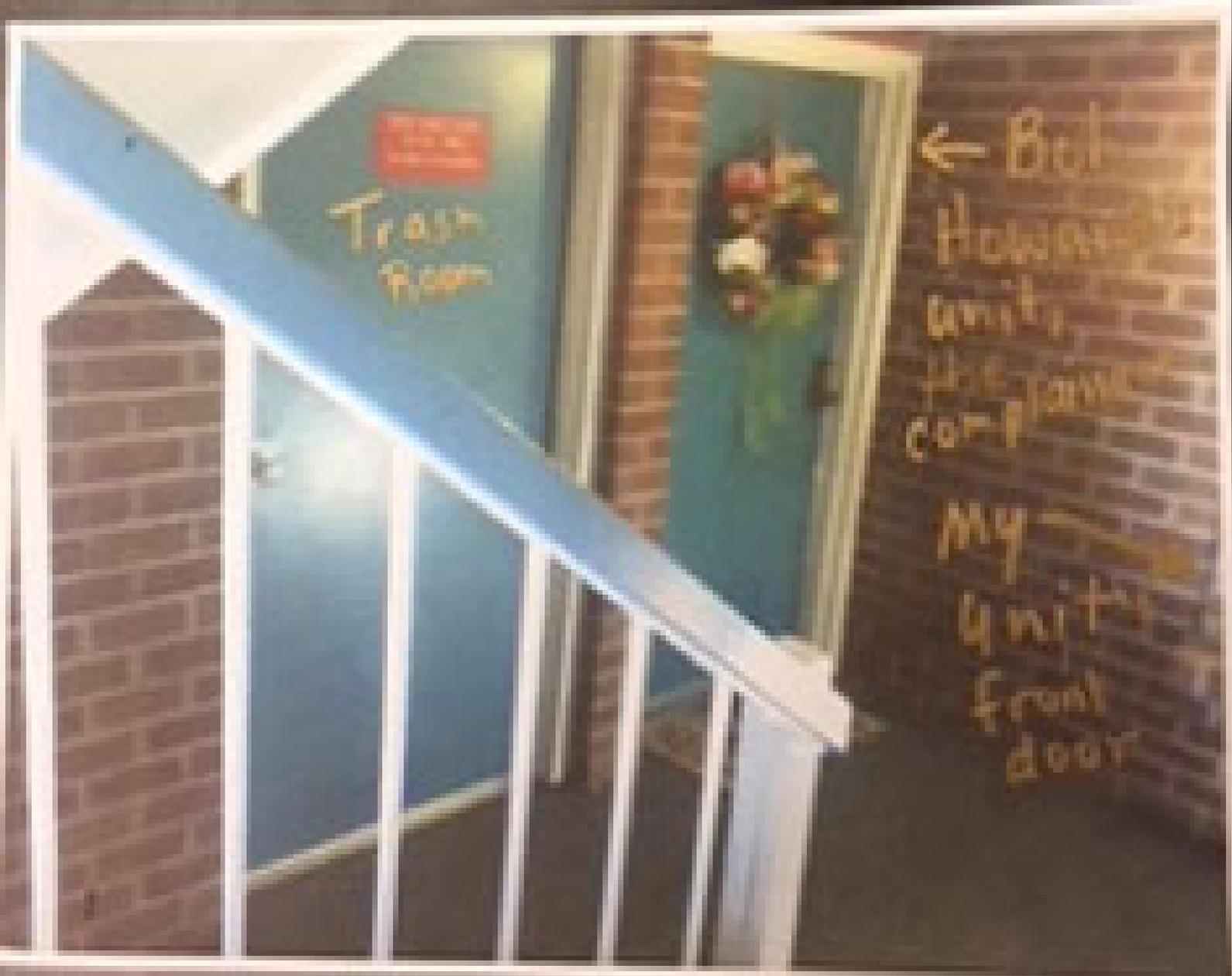


VACUUM and floor
WASHER

Brooms



1985



(1) Living Room, Dining Room, Hallway

The Living Room, Dining Room and hallway were inspected. No violations were observed, however, visible water damage to the ceiling in the living room was observed (Figure 1).

There was a noticeable smell of animals being present in the unit, however, there was no indication of animal urine, feces, or other condition that would be unsanitary. The smell was not noticeable from the outside the unit. The living room and dining rooms were arranged such that there was a clear path to move safely from room to room. There was no significant damage observed to the vinyl flooring, or walls.

(2) Kitchen

The Kitchen was inspected. No violations were observed, however, visible water damage to the ceiling in the kitchen was observed (Figure 2).

The water damage was observed directly above the washer and dryer, possibly from the washer of the unit above, assuming the layout in the unit. The appliances appeared to be in acceptable condition and the room was clear from any tripping hazards. There was no significant damage observed to the vinyl flooring or walls.

(3) Bathroom

The Bathroom floor was inspected. One condition to correct was observed.

The Bathroom has significant visible water damage to the ceiling. There is an open hole directly above the shower requiring a repair that was done to the hot water supply pipe for the shower (Figure 3).

Since the unit above is vacant, it is not possible at this time to tell if the drain for their tub is leaking after causing water damage to the ceiling. Mr. Hobbs agreed to coordinate with Amick and the Association to allow access to the unit so that this condition could be corrected.

(4) Bedrooms

The master bedroom and second bedroom were briefly inspected. No violations or conditions to correct were observed.

The second bedroom appeared to be used as a storage area. There was a noticeable smell of animals being present, however, there was no indication of animal urine, feces, or other condition that would be unsanitary.

(5) Utility Closet

The utility closet was inspected. One condition to correct was observed.

An HVAC unit was present, but it was observed that the condensate drain is not connected to the unit which will lead to water damage in the unit over time when the unit is in use. There is also damage to the main condensate line that all the HVAC units connect to in the unit (Figure 4).

(6) Miscellaneous

During the inspection, 2 dogs and 2 cats were observed in the unit.

Final Written Arguments
Submitted, through legal counsel,
By the Owner (Karen Hobbs)

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VIRGINIA:

IN THE STATE TECHNICAL REVIEW BOARD

In RE: KAREN HOBBS
APPEAL NO. 18-21

APPELLANT'S BRIEF SEEKING REVERSAL OF LOCAL BOARD'S DECISION
UPHOLDING NOTICE OF VIOLATION OF FAIRFAX COUNTY LOCAL BOARD OF
BUILDING CODE APPEALS

Ms. Hobbs is the owner of a condominium in Fairfax County, 11812 Breton Court, Unit 2, Reston, Virginia 20191. Her property has been the subject of multiple complaints since 2012 initiated by the same person. This time is similar to those in the past. Inspections of her property have not yielded any violations until she received Notices of Violations (NOVs) dated October 10, 2018. Ms. Hobbs sought appeal with the Fairfax County Local Board of Building Code Appeals. Her appeal was denied. She has appealed this matter to this body of the State Technical Review Board.

PROPOSED FINDINGS OF FACT

1. There was no unsanitary condition identified within Ms. Hobbs' residence.
2. There is no proof of rubbish or garbage in Ms. Hobbs' residence.
3. There is no proof that there was a dangerous condition of no egress.
4. There was no need identified within Ms. Hobbs' residence that required a determination that the structure was unfit for human occupancy.

STIPULATION OF THE COUNTY'S FACTS

Upon information and belief the same neighbor who has complained multiple since 2012, made a complaint to Fairfax County Department of Code Compliance, Animal Protection

Police¹, or both. In response, Catherine Lunsford, an inspector with the Fairfax County Department of Code Compliance, and Officer J. McLemore of the Fairfax County Animal Protection Police, went to Ms. Hobbs' residence on October 4, 2018.

Officers Lunsford and McLemore went to the door but did not enter the residence on their first visit on October 4, 2019. They spoke with Ms. Hobbs, who was on her way out and advised them she would be back that afternoon. The officers returned a second time, but no one answered the door.

Officers Lunsford and McLemore enlisted the help of the property manager, Keith Elliot, who contacted a locksmith to come to the scene on the belief that the Condominium Association was allowed to force their way in under certain urgent conditions. Ms. Hobbs arrived on the scene before a locksmith. "Elliot and County personnel..." according to Ms. Lunsford's Inspection Table, tried to convince Ms. Hobbs that Ms. Hobbs had to allow them entry to the residence.

The effort to convince Ms. Hobbs to let them in went on for several hours outside Ms. Hobbs' door. It appears that the locksmith was not involved in the discussion during this time, but his presence and/or actions required Ms. Hobbs to place herself between him and the door to prevent him from forcibly opening her door.

Ms. Hobbs agreed that the Fairfax County representatives could try back the next morning. On October 5, 2018, Ms. Lunsford and Matt Stenger of Code Compliance returned and were allowed inside of Ms. Hobbs' residence, but not into the bathroom or bedroom. Lunsford and Stenger had access to the living room, kitchen, dining room and hallway.

¹ Fairfax County Animal Police personnel inspected Ms. Hobbs' pets and found that they were in good health and Ms. Hobbs was not in violation of any code or regulation regarding her animals.

Ms. Lunsford reported the following: difficulty breathing inside the unit because of an “ammonia” odor; heavy clutter, junk and debris throughout; and urine and feces on the living room floor. Photos were taken of the interior. Those seven photos of the interior are included in documents submitted by the County for this appeal.

Before leaving, Lunsford and/or Stenger advised Ms. Hobbs, by word of mouth and by placing a placard on the front and rear sliding glass door, that she was prohibited from entering the unit except at certain daytime hours and for certain reasons.

Subsequently, Code Compliance placed new placards on the unit that allowed access between 7:00 a.m. and 8:00 p.m. beginning October 7, 2019. Ms. Lunsford also reports that those new rules were communicated to Ms. Hobbs by phone.

There were no Code Compliance inspections before Ms. Hobbs appeal request was heard on November 14, 2015 by the Fairfax County Board of Building Code Appeals. The Appeals Board denied Ms. Hobbs’ request for an appeal because “the violations cited in the notice of violation have not been corrected, nor has any attempt been made by the appellant to correct them and have the county re-inspect the condo unit.”

Ms. Lunsford and Department of Code Compliance employee, C. Fitzhugh, inspected Ms. Hobbs’ property on November 15, 2018 and found that significant improvement towards compliance had been made, including the ammonia smell and egress.

DISCUSSION

The Appeals Board found the violations had not been corrected on November 14, 2015 but had been corrected on November 15, 2015. Had Ms. Hobbs done anything between November 14 and November 15? The conditions that led to the NOVs were likely not present on November 14 as well. The conditions on November 14 were significant enough to close off the

residence and Ms. Hobbs had not done anything to correct the problems by November 14. It would be impossible for her to have made such significant corrections overnight.

The source of the ammonia smell was not located. If the ammonia smell was contributing to the determination that the residence was unsafe to live in or to be in proximity to, then finding the source of the smell would be important.

The reason for a determination of, “unsanitary,” was not given. Ms. Lunsford merely states, “Kitchen facilities were severely unsanitary.” There seems to have been much said before the Appeals Board about fruit flies. Ms. Hobbs states there was a small amount of fruit that needed to be discarded.

Ms. Lunsford concluded that some of the “clutter” she saw was “junk and debris.” Ms. Hobbs states that she was in the process of doing laundry, needed to take out the trash, and was working on some household repairs.

Ms. Lunsford identifies a section of the flooring as “urine/feces” in one of the photographs. Ms. Hobbs disagrees with that conclusion.

There is no denying that the photographs show there are items in the floor that reduce the amount of floor space available for walking. The photographs do not show that the total floor space is blocked or that there is no walkway. The photographs are such that one cannot see the floor, not because anything is blocking it in some cases, but because of the poor quality of the photographs. The floor space is always too dark to see. It’s impossible to tell if there is a walkway or not. There was sufficient space for movement by the personnel from Code Compliance to the other side of the room. Someone took the photo of the hallway and one photo shows a male looking out the sliding glass door. Labels are placed over important areas in the

best copies of the photos in the record and make it difficult to know what might be revealed of the floor underneath the labels.

Ms. Hobbs disagrees with Ms. Lunsford's recollection that Ms. Hobbs voluntarily gave permission for Ms. Lunsford to return the next morning, take photos, or for Code Compliance in to do an inspection for code violations. Any agreement that County representatives could return the next day was due to the October 4th unrelenting hours of pressure she endured at her front door. Any photos taken were taken when she had to leave the unit during the visit on October 5th in order to retrieve her dog that someone from the County let out. Ms. Hobbs only let the county workers in on October 5th to allay their fears about anything therein being a threat to anyone's safety.

The group on October 5th took advantage of Ms. Hobbs. The property manager had no basis to enter the unit once Ms. Hobbs arrived. His response to concerns that there was a danger in Ms. Hobbs unit came from Officer Lunsford and Officer Stenger. Ms. Hobbs was in a better position to know whether there was or wasn't a danger inside. Mr. Elliot should have stepped down at that moment when Ms. Hobbs assured him there was no danger. Officers Lunsford and Officer Stenger used the threat of forced entry, without a valid cause, to force Ms. Hobbs to relent.

Conclusion

The decision of the Appeals Board should be overruled because its determination that the conditions had not been corrected on November 14, 2018 were false. Ms. Hobbs had not done anything to correct them, according to the written determination of the Appeals Board, but the next day Ms. Lunsford lifted the ban on entry because "significant improvement" had been made.

The decision of the Appeals Board should be overruled because conditions that corrected themselves over a period of a month were not likely that significant in the first place. Ms. Lunsford does not identify what had been done by November 15, 2018 that prompted her to lift the ban on access.

The decision of the Appeals Board should be overruled because Ms. Lunsford's conclusions that there were violations of Virginia Property Maintenance Code §§ 305.1, 308.1, and 702.1 are not supported by her photos and narrative in the Inspection Table. The narrative and photographs do not support the determination that conditions were unsanitary in the unit, there was rubbish or garbage in the unit, other than a small amount which Ms. Hobbs could explain, or that there was insufficient egress via a safe, continuous, and unobstructed path out of the unit.

The decision of the Appeals Board should be overruled because, other than Ms. Lunsford's account there is no corroboration that the conditions in the unit were any different on November 15, 2018, when the ban under VMC § 202 was lifted and acceptable, than the conditions were in the unit on October 4 and 5, 2018. The person who accompanied her on the November 15th visit and found the unit livable was not the same person with her on October 4, 2018 when she found the unit unsafe for occupancy. That the conditions in the property were any worse on October 5, 2018 than on November 15, 2018 is a matter of Ms. Lunsford's word against Ms. Hobbs' word. There is no reason not to believe Ms. Hobbs.

Respectfully Submitted,
Karen Hobbs

Of Counsel

Douglas E. Crockett, Esq. (43461)
407 East Nine Mile Road, Suite C
Highland Springs, VA 23075
804-328-6500 phone
804-328-6501 fax
dcrockett@highlandspringslawyer.com
Counsel for Appellant

Certification

I certify that I emailed the foregoing Appellant's Brief to Marc E. Gori, Esq., at marc.gori@fairfaxcounty.gov.

Douglas E. Crockett

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Eagle Properties and Investments LLC
Appeal No. 18-15

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Eagle Properties and Investments, LLC.
Appeal No. 18-15

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. Eagle Properties and Investments, LLC (Eagle Properties) owner of the property located at 1203 Cottage Street S.W., appeals the citations under Part I of the Uniform Statewide Building Code (Virginia Construction Code or VCC) by the Fairfax County Department of Code Compliance (County).

2. On March 27, 2018, a representative of the County conducted an inspection at the Cottage Street property resulting in the issuance of a Corrective Work Order (CWO) dated April 3, 2018 citing several violations of VCC related to work performed without permits, inspections, and approvals, to include but not limited to, enclosing a carport and altering the main level floor plan. A subsequent Notice of Violation (NOV) was issued on April 30, 2018. Eagle Properties asserts that the cited work described in the CWO and NOV requiring permits was completed prior to their purchasing of the property in 2017. Eagle Properties acknowledges they performed work, which did not require permits, such as installing granite countertops, kitchen flooring, a new roof, windows, a stone patio in the backyard, and renovating the bathrooms.

3. Eagle Properties filed a timely appeal to the Fairfax County Board of Building Code Appeals (County appeals board). The County appeals board subsequently conducted a hearing and ruled to uphold the CWO.

4. Eagle Properties further filed a timely appeal to the Review Board.

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5. Review Board staff drafted this staff document and forwarded it to the parties along with a copy of all documents 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 Issues for Resolution by the Review Board

1. Whether to overturn the decision of County and the County appeals board that Eagle Properties is the responsible party for the cited violations.

If so, then:

2. Whether to overturn the decisions of County and the County appeals board that violations of VCC Section 108.1 exists.

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Basic Documents

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County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

CORRECTIVE WORK ORDER Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: April 03, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover Avenue N.W.
Vienna, Virginia 22180

LOCATION OF VIOLATION: 1203 Cottage Street S.W.
Vienna, Virginia 22180

TAX MAP REF: 0482 03 2370

CASE #: 201801284 **SR#:** 147344

ISSUING INVESTIGATOR: Manuel Felipe, (703) 324-1190

In accordance with Part I of the Virginia Uniform Statewide Building Code (USBC) 2012 Edition, effective July 14, 2014 an inspection on March 27, 2018 revealed a violation or violations as listed below at the referenced residential location. The cited violation(s) must be corrected within thirty (30) calendar days from receipt of this notice unless otherwise indicated.

Explanation: On March 27, 2018, County staff inspected the above referenced property and discovered that construction, alterations and installations have been performed without the issuance of the required permit(s), inspections, and approvals. The construction, alterations and installations are, but not limited to, the following:

- The carport was enclosed on the subject property, which included electrical, and framing.
- The main level floor plan was altered, which included electrical and plumbing.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-4459 TTY 711
www.fairfaxcounty.gov/code

Bagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 03, 2018
SR 147344
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Permits that may be required, but are not limited to, are the following:

- Building
- Electrical
- Mechanical
- Plumbing
- Demolition

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections, Section 113.8 Final Inspection*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Mammel Felipe to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

- **BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.**

Once the permit is issued, call (703) 631-5101, TTY 711 to schedule all building inspections related to this matter. Please reference Case 201801284. Failure to call for the required inspections within ten (10) calendar days will result in a separate Notice of Violation. This notice must be available for County field staff throughout the inspection process.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center

Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 03, 2018
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The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: (703) 222-0801

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703) 324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Manuel Felipe by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703) 324-1190 within three (3) working days from the date you receive this Order. Failure to do so shall result in the immediate issuance of a Notice of Violation and the initiation of legal action to bring the above referenced property into compliance with the USBC.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703) 324-1190 or the main office at (703) 324-1300.

Notice Issued By:



Signature

Investigator, Manuel Felipe
(703) 324-1190
Manuel.Felipe@fairfaxcounty.gov
Technical Assistant to the Building Official
Department of Code Compliance

CC: Case File



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: April 30, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney

ADDRESS: 3970 Chain Bridge Road
Fairfax, VA 22030

LOCATION OF VIOLATION: 1203 Cottage Street S.W.
Vienna, Virginia 22180

TAX MAP REF: 0482 03 2370

CASE #: 201801284 **SR#:** 147344

ISSUING INVESTIGATOR: Manuel Felipe, (703) 324-1190

You were issued a Corrective Work Order on April 3, 2018 for violations of the Virginia Uniform Statewide Building Code (USBC) 2012 Edition, effective July 14, 2014. Staff confirmed on April 27, 2018 that the violations itemized below remain.

Explanation: On March 27, 2018, County staff inspected the above referenced residential property and discovered that construction, alterations and installations have been performed without the issuance of the required permit(s), inspections, and approvals. The construction, alterations and installations are, but not limited to, the following:

- The carport was enclosed on the subject property, which included electrical, and framing.
- The main level floor plan was altered, which included electrical and plumbing.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney
April 30, 2018
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Permits that may be required, but are not limited to, are the following:

- Building
- Electrical
- Mechanical
- Plumbing
- Demolition

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections, Section 113.8 Final Inspection*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within set calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Manuel Felipe to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

- **BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.**

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building

Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney
April 30, 2018
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12055 Government Center Parkway, 2nd Floor

Fairfax, Virginia 22035
Telephone: (703) 222-0801

***When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.**

***If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703) 324-1300 who issued the Notice before coming to the Permit Application Center in the Herry Building to obtain your permit. When coming to obtain your permit, bring this notice with you.**

You are directed to notify Manuel Felipe by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703) 324-1190 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: As provided by the USBC, Section 119.5, *Right to appeal; filing of appeal application*, you have the right to appeal this decision to the Local Board of Building Code Appeals (LBBCA), within thirty (30) calendar days of receipt of this notice. You may call the secretary of the LBBCA at (703) 324-1960, TTY 711 for more information about the appeals process. Appeal application forms may be obtained by contacting:

Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703) 324-1780

Information and forms can also be obtained at:

<https://www.fairfaxcounty.gov/bacs/BoardDetails.aspx?BoardID=22001>

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the code official's decision.

Failure to correct these defects within the time limits specified shall result in enforcement action being taken under the applicable State and County Codes.

Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney
April 30, 2018
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Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703) 324-1190 or the main office at (703) 324-1300.

Notice Issued By:



Signature

**Manuel Felipe
(703)324-1190**



Building Code Appeal Request

PROJECT INFORMATION

Project Name: N/A
 Project Address: 1203 Cottage Street S.W., Vienna, Virginia 22180
 Permit or case number: 201801284 Tax map number: 0482 03 2370

APPLICANT INFORMATION

Applicant Name: J. Chapman Petersen, Esq. Owner Owner's agent
 Address: 3970 Chain Bridge Road
 City: Fairfax State: VA ZIP: 22030
 Phone: 571-459-2510 Email: jcp@petersenfirm.com

OWNER INFORMATION

See applicant information
 Owner Name: Eagle Properties and Investments LLC
 Address: 445 Windover Avenue
 City: Vienna State: VA ZIP: 22180
 Phone: 571-436-3545 Email: amit@eagleinvestmentsllc.com

APPEAL INFORMATION

Appealing decision made on the date of by Building Official Fire Official Property Maintenance Official rendered on the following date: -
 Code(s) (IBC, IMC, IPMC, etc.) and year-edition: Virginia Uniform Statewide Building Code ("USBC") 2012
 Section(s): Sections 108.1, 113.3, and 113.8.

REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:
 Minor and ordinary repair work were made to 1203 Cottage Street S.W., Vienna, VA 22180 (the "Property") since the current owner purchased the Property in July 18, 2017 (the "2017 Purchase"). As per the USBC 2012, the current "owner" made no alterations (as alleged in the Notice of Violation) that would require Building, Electrical, Mechanical, Plumbing, or Demolition permits.
 The "main floor plan" was never "altered" by the current owner as alleged on the Notice of Violation. As per the "enclosed carport," there is a one-car garage which is and has been enclosed prior to the 2017 Purchase.
 Therefore, the current "owner" cannot be liable for failing to obtain permits as alleged in the Notice of Violation. The current owner undertook minor and ordinary repair work that did not adversely affect public health or general safety in any way.

Please return the completed form and any supporting documentation to the address or email below.

Chairman, Fairfax County Board of Building Code Appeals -
 12055 Government Center Parkway, Suite 334 -
 Fairfax, VA 22035-5504 -
 Attention: Secretary to the Board -
buildingofficial@fairfaxcounty.gov

RESOLUTION

WHEREAS, the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of enforcement of the USBLD Code/ 2012 Edition;

and

WHEREAS, an appeal has been timely filed and brought to the attention of the Board; and
WHEREAS, a hearing has been duly held to consider the aforementioned appeal; and
WHEREAS, the Board has fully deliberated this matter; now, therefore, be it

RESOLVED, that the matter of

Appeal No. 180524.0 AP
In RE: EAGLE PROPERTIES & INVEST. v. FAIRFAX COUNTY DCC

The appeal is hereby DENIED for the reasons set out below.

AS INDICATED BY FC DCC A CARPORT WAS ENCLOSED WITHOUT A PERMIT AND NECESSARY INSPECTIONS AND THE MAIN LEVEL FLOOR PLAN WAS MODIFIED WITHOUT A PERMIT AND NECESSARY INSPECTIONS.

FURTHER, be it known that:

1. This decision is solely for this case and its surrounding circumstances;
2. This decision does not serve as a precedent for any future cases or situations, regardless of how similar they may appear;
3. (If appropriate to the motion) No significant adverse conditions to life safety will result from this action; and
4. All of the following conditions be observed.

- a. N/A
- b. _____
- c. _____

Date: August 8, 2018

Signature: [Signature]
Chairman, Board of Building Code Appeals

Note: Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219 or by calling 804.371.7150.

Carla Guerra-Morales hereby certify that this is
CUSTODIAN
a true copy of a Fairfax County Department of Land Development
Services record of which I am a custodian.

Carla Guerra-Morales
CUSTODIAN

Brian Foley hereby certify that this is
SUPERVISOR OF CUSTODIAN
a true copy of a Fairfax County Department of Land Development
Services record of which Carla Guerra-Morales is the
CUSTODIAN
custodian and that Carla Guerra-Morales reports to me.
CUSTODIAN

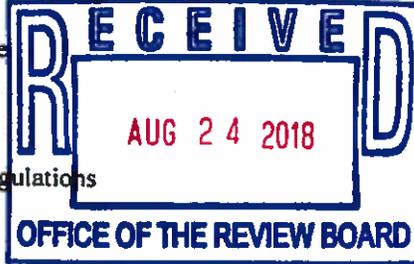
Brian Foley
SUPERVISOR OF CUSTODIAN

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhcd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

- Uniform Statewide Building Code
- Statewide Fire Prevention Code
- Industrialized Building Safety Regulations
- Amusement Device Regulations



Appealing Party Information (name, address, telephone number and email address):

Eagle Properties and Investments LLC

445 WINDOVER AVENUE, VIENNA, VA 22180

571-436-3545; amit@eagleinvestmentsllc.com; dalip@eagleinvestmentsllc.com

Opposing Party Information (name, address, telephone number and email address of all other parties):

Fairfax County DCC

12055 Government Center Parkway, Suite 1016, Fairfax, VA 22035

703-324-1300; DCCCodeComplianceE-mail@fairfaxcounty.gov; al.sanchez@fairfaxcounty.gov

Additional Information (to be submitted with this application)

- Copy of enforcement decision being appealed
- Copy of record and decision of local government appeals board (if applicable and available)
- Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of August, 2018 a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: [Handwritten Signature]

Name of Applicant: J. Chapman Petersen (attorney for Eagle Properties & Investments LLC)
(please print or type)

VIRGINIA:

State Building Code Technical Review Board

In RE Eagle Properties & Investments LLC)	
Appellant)	
v.)	Appeal No. 180524.0 AP
Fairfax County DDC)	
Appellee)	

APPELLANT’S STATEMENT OF SPECIFIC RELIEF SOUGHT

COMES NOW Appellant Eagle Properties and Investments LLC (“Eagle”), by counsel, pursuant to the Uniform State Building Code, 2012 Edition (“USBC”), § 119.8, and Virginia Code 13VAC5-63-190(H) and §36-114, hereby states the following in support of its Statement of Specific Relief Sought:

Statement of Facts

The property subject to this appeal is 1203 Cottage Street, S.W., located in the Town of Vienna, Virginia (the “Property”). Appellant purchased the property on July 18, 2017. After purchasing the property, Eagle made certain alterations such as installing new granite countertops, kitchen flooring, a new roof, windows, a stone patio in the backyard, and it renovated bathrooms.

On April 30, 2018, the Appellee issued a Notice of Violation (“NOV”) against appellant alleging certain violations of the USBC. Specifically, the NOV alleged certain construction, alterations and installations were performed without the issuance of the required permits. Namely, a “carport was enclosed on the subject property, which

included electrical, and framing” and the “main level floor plan was altered, which included electrical and plumbing.” Pursuant to USBC, § 119.5., Eagle appealed the NOV to the LBBCA, which was denied on August 8, 2018. Eagle now seeks relief before this body.

This appeal concerns three (3) issues: (i) whether Eagle can be imposed a criminal penalty for the enclosure of the carport which it never installed; (ii) whether Eagle can be liable for the minor, ordinary, alterations it made without the issuance of permits as alleged in the NOV; and (iii) if any exceptions of the USBC apply to the alterations made by Eagle.

Jurisdiction

The General Assembly established the Review Board and gave it “the power and duty to hear all appeals from decisions [of the local board of Building Code appeals] arising under application of the Building Code.” Code § 36-114. “Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).” *Id.* “[N]o appeal to the . . . Review Board shall lie prior to a final determination by the local board of Building Code Appeals” (“LBBCA”). Code § 36-105. Here, the LBBCA has issued its resolution and therefore this body has jurisdiction over this appeal.

Standard of Review

On appeal of an agency decision,

the sole determination as to factual issues is whether substantial evidence exists in the agency record to support the agency's decision. The reviewing court may reject the agency's findings of fact only if, considering the record as a whole, a reasonable mind necessarily would come to a different conclusion.

Avalon Assisted Living Facilities v. Zager, 39 Va. App. 484, 499-500 (2002) (quoting *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 242, 369 S.E.2d 1, 7, 4 Va. Law Rep. 2665 (1988)). In making this determination, “the reviewing court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.” *Id.* On review of an agency's decision, the sole question regarding “factual issues is whether substantial evidence exists in the agency record to support the agency's decision.” *Strawbridge v. County of Chesterfield*, 23 Va. App. 493, 503 (1996) (quoting *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 242, 369 S.E.2d 1, 7 (1988)).

“On appeal of an agency's determination on issues of law, the standards differ.”

If the issue falls outside the area generally entrusted to the agency, and is one in which the courts have special competence, i.e., the common law or constitutional law, the court need not defer to the agency's interpretation.

Id. at 243-44, 369 S.E.2d at 8 (quoting *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 914-15 (3d Cir. 1981)) (internal quotations omitted).

However, where the question involves an interpretation which is within the specialized competence of the agency and the agency has been entrusted with wide discretion by the General Assembly, the agency's decision is entitled to special weight in the courts[, and] . . . “judicial interference is permissible only for relief against the arbitrary or capricious action that constitutes a clear abuse of delegated discretion.”

Id. at 244, 369 S.E.2d at 8 (quoting *Va. Alcoholic Beverage Control Comm'n v. York St. Inn, Inc.*, 220 Va. 310, 315, 257 S.E.2d 851, 855 (1979) (quoting *Schmidt v. Bd. of Adjustment*, 9 N.J. 405, 88 A.2d 607, 615-16 (N.J. 1952)). “No matter how one calibrates judicial deference, the administrative power to interpret a regulation does not include the power to rewrite it.” *Bd. of Supervisors v. State Bldg. Code Tech. Review*

Bd., 52 Va. App. 460, 466 (2008). Courts are required only “to accept only those agency interpretations that are reasonable in light of the principles of construction courts normally employ.” *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 260, 111 S. Ct. 1227, 113 L. Ed. 2d 274 (1991) (Scalia, J., concurring).

“One of the important purposes of the Building Code is to provide for ‘the safety of ultimate construction.’” *Virginia Electric & Power Co. v. Savoy Constr. Co.*, 224 Va. 36, 44 (1982). Another important purpose of the Building Code is to “enhance the safety of those working on the project and, indeed, the safety of the project itself.” *Id.* “The dominant purpose of the Building Code, therefore, is to provide comprehensive protection of the public health and safety.” *Id.*

Building code violations are “deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than \$2,500.” Code § 36-106. The statute further provides that “each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense” and that “if the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code.” *Id.* The Building Code must be construed “broadly enough to give substantial effect to this manifest legislative purpose without disregarding its penal effects.” *Id.* (citing 3 *Sutherland Statutory Construction* § 59.05, at 16-17 (4th ed. C. Sands 1974)).

Relief Sought

I. The Enclosed Carport

Virginia Code § 36-106 states: “It shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any Code provisions, to violate any such provisions.” The Virginia Supreme Court has held that “[T]he provisions of the Building Code apply at any stage during construction to any work that has been done.” *Savoy* at 44.

There must be compliance with the Building Code not only when work is performed but also when work required by the Building Code should be done to safeguard persons and property. Compliance only upon completion of the entire project in many instances may be sufficient, but earlier compliance is necessary where danger may arise from delay in the performance of required work.

Id. at 45. Applying the USBC to hold Eagle liable for the enclosed carport is not permissible upon a plain reading of Virginia Code § 36-106, as the carport was already enclosed when Eagle purchased the Property. The Virginia Supreme Court has been clear as to when the provisions of the USBC apply. *Savoy* at 43-45. Clearly, this is not a scenario envisioned by the Virginia Supreme Court to which the USBC shall apply. *Id.*

A penal statute must be strictly construed, *Rollins v. Gordonsville*, 216 Va. 25, 215 S.E.2d 637 (1975), and violation of the Building Code may result in criminal sanctions. In other words, imposing liability upon Eagle, an innocent, bona-fide purchaser, for the acts of the previous owner of the Property, does not fall within the scope of § 36-106. Therefore, Eagle cannot be liable for the enclosed carport. *See* Code § 36-106 and *Savoy* at 43-45. This position is further supported by § 108 of the USBC which, in pertinent part, states: “Application for a permit shall be made to the building official and a permit shall be obtained prior to the commencement of any of the following activities ...” USBC § 108.1. To hold otherwise is to go against the Supreme Court’s reasoning. *Savoy* at 43-45.

II. Main Level Floor Plan

The only alterations Eagle has conceded remotely relating to the main floor plan being altered is that it made improvements to the kitchen flooring. An application for permit is not required for such an improvement. USBC § 108.1. Matter of fact, the USBC contains several exemptions from application for permit. USBC § 108.2. Among those exceptions are ordinary repairs, which includes “Installation or replacement of floor finishes in all occupancies.” USBC § 108.2(14.7). This is exactly what Eagle did. Therefore, Eagle was not required to seek any permits for its improvements to the kitchen floor, as installation or replacement of floor finishes are exempted under the USBC. *Id.* Furthermore, Eagle’s improvement to the kitchen flooring also falls within the scope of exemption 14.11: “Other repair work deemed by the building official to be minor which does not adversely affect public health or general safety.” USBC § 108.2(14.11). Further, there is no evidence to implicate that Eagle altered the main floor plans. If anything, it was the previous owner and the holding in *Savoy* requires that Eagle not be liable under the USBC for the acts of the previous owner. *Savoy* at 43-45.

WHEREFORE Eagle Properties and Investments LLC seeks that the decision of the LBBCA be reversed and overturned for the reasons set forth herein.



J. Chapman Petersen, Esq., VSB #37225
David L. Amos, Esq., VSB #87271
CHAP PETERSEN & ASSOCIATES, PLC
3970 Chain Bridge Road
Fairfax, Virginia 22030
(571) 459-2510 (direct dial)
(571) 459-2307 (facsimile)
jcp@petersenfirm.com
dla@petersenfirm.com

**Eagle Properties and Investments LLC
By Counsel**

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Documents Submitted
By Eagle Properties and
Investments, LLC through counsel

(Page left blank intentionally)



**CHAP PETERSEN
& ASSOCIATES, PLC**

J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

April 23, 2018

**Via electronic mail Jack.Weyant@fairfaxcounty.gov
and first-class mail**

Jack W. Weyant, PE, Director
Fairfax County Department of Code Compliance
12055 Government Center Parkway, Suite 1006
Fairfax, VA 22035-5500

Re: *1203 Cottage Street, S.W., Vienna VA 22180*

Dear Mr. Weyant:

Please be advised that this firm represents Eagle Properties and Investments, LLC ("Eagle Properties"), which owns the property at 1203 Cottage Street, S.W. ("the Property") in the Town of Vienna.

We are in receipt of a "Corrective Work Order" dated April 3, 2018 from the Fairfax County Department of Code Compliance ("the Department"). The references an "inspection" of March 27, 2018 which occurred at the Property and apparently found "constructions, alterations and installations" which had been made at the Property. Specifically, the Department found that:

- "The carport was enclosed ... which included electrical, and framing."
- "The main level floor plan was altered, which included electrical and plumbing."

We are not aware of that March 27th inspection taking place. My client did not give permission for anyone to enter the Property. Therefore, I'm not sure how it could have been "inspected" without that permission.

Here is a brief history: my client purchased the Property on July 18, 2017. Since that time, it has made several improvements to the Property, including new granite countertops and kitchen flooring, renovated bathrooms, new roof and windows, and a stone patio in the backyard. It has made no structural alterations to the Property which would require pulling permits. As far as the carport, there is a one-car garage which is and has been enclosed prior to the 2017 purchase. As

**Letter to Fairfax County, Dept. of Code Compliance
April 23, 2018**

you know, my client cannot be held responsible for work that occurred prior to its purchase, as it was a *bona fide* purchaser in due course.

Notably, my client has been in communication with the Town of Vienna for the past several months regarding its work on the Property. It never was directed to apply for or obtain any permits, either for construction or demolition.

In summary, the Property is structurally the same residence purchased by my client in July 2017, with some discrete upgrades. There is no evidence that it is non-compliant with County Code. We do not consent to have the Department "inspect" the Property, as there is simply no valid reason to do so. Please be advised that the April 25th meeting will not be taking place.

Thank you. Please feel free to contact me with any questions.

Very Truly Yours,

J. Chapman Petersen

**jcp
copy:**

client



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

April 25, 2018

J. Chapman Petersen
Chap Petersen & Associates
3970 Chain Bridge Road
Fairfax, VA 22030

Re: 1203 Cottage Street, S.W., Vienna, VA 22180

Mr. Petersen:

As discussed in our telephone conversation yesterday, April 24, 2018, I am responding to address the concerns of your April 23, 2018 letter regarding the property located at 1203 Cottage Street.

As background, the Department of Code Compliance (DCC) is a complaint-driven agency that responds to complaints from citizens or the public in general, related to possible zoning, property maintenance, fire, and building code violations. On March 3, 2018, a complaint was received against the 1203 Cottage Street property concerning unpermitted construction, interior renovations without the appropriate electrical, plumbing, and mechanical permits. The case was assigned to Manuel Felipe, one of our DCC building inspectors who investigates unpermitted construction.

Prior to conducting an onsite investigation, Mr. Felipe researched Fairfax County records to establish the property history, property ownership, and to confirm that no permits have been issued for any new or recent work at the property. On March 27, 2018, Mr. Felipe visited the property and finding no one present at the residence, left a 'door tag' requesting that the property owner contact him to discuss the case. A visual inspection of the front of the structure indicated that the garage had been added to the original structure; however, there were no permits on file for that work.

Upon noticing a For Sale sign in the front yard, Mr. Felipe reviewed the MRIS listing and found photographs indicating the possible removal of interior walls, new kitchen construction, new bathroom construction, and other improvements, none of which were permitted with Fairfax County.

On April 3, 2018, as is normal protocol for DCC, a Corrective Work Order (CWO) was delivered to the property owner by the Fairfax County Sheriff, establishing the violations and requesting a meeting with Mr. Felipe to discuss a plan for achieving compliance for all unpermitted work.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Following my phone conversation with the property owner, a meeting was held on April 19, 2018 with the property owner, his employee, Mr. Felipe and me, to discuss the violations and establish a plan for achieving compliance. After that meeting, a date of Wednesday, April 25, 2018 was established for Mr. Felipe to visit the property and inspect the interior and exterior of the structure. Upon completion of that inspection, staff would be able inform the property owner of the requirements to achieve compliance for the violations, which would likely involve the preparation of plans, the submittal and approval of plans, inspections by County staff, and final release of the permits. As your letter states that there is no reason to meet on the 25th, that meeting was canceled and Mr. Felipe will move forward with the next step in the process, which is to issue a Notice of Violation (NOV) to the property owner, with a specified timeframe for compliance established. As with the CWO, the NOV will be served to the property owner by one of our DCC sheriffs. Upon issuance of that NOV, Mr. Felipe will be available to meet with the property owner to discuss a plan and a timeframe to achieve compliance.

I hope this information satisfies your concerns; however, if you have further questions or require additional information, please contact me at 703-324-9330.

Sincerely,



Jack W. Weyant, P.E., Director
Fairfax County Department of Code Compliance

cc: Manuel Felipe
David Stoner, Fairfax County Office of the County Attorney



**CHAP PETERSEN
& ASSOCIATES, PLC**

J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

April 30, 2018

Via First-Class Mail

Fairfax County Department of Code Compliance
c/o Manuel Felipe, Investigating Officer
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508

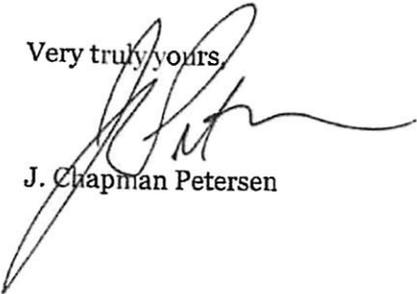
Re: **Notice of Violation**
Case #201801284; SR #147344

Dear Mr. Felipe:

I am in receipt of the Notice of Violation issued on April 30, 2018 (the "Order") in the above-referenced case. This letter is to confirm receipt of the Order.

If you have any further questions or concerns, please contact me.

Very truly yours,


J. Chapman Petersen

Cc: client



J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

May 24, 2018

Via First-Class Mail and E-Mail

Chairman, Fairfax County Board of Building Code Appeals
12055 Government Center Parkway, Suite 334
Fairfax, Virginia 22035-5504
Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov

Re: **Building Code Appeal Request**
Case #201801284; SR #147344

Dear Secretary:

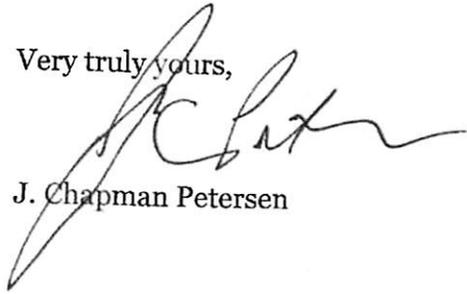
Please be advised that this firm represents Eagle Properties and Investments, LLC ("Eagle Properties"), which owns the property at 1203 Cottage Street, S.W. in the Town of Vienna.

I am in receipt of the Notice of Violation issued on April 30, 2018 (the "Order") in the above-referenced case. This letter is to confirm an appeal request of the Order on behalf of Eagle Properties.

As required by Part I of the Virginia Uniform Statewide Building Code 2012, Section 119.5., please find enclosed (i) the written request for appeal, (ii) a copy of the building official's decision and (iii) relevant documents thereto.

If you have any further questions or concerns, please contact me.

Very truly yours,


J. Chapman Petersen

Enclosures as stated
Cc: client

MAP #: 0482 03 2370
EAGLE PROPERTIES AND INVESTMENTS
LLC

1203 COTTAGE ST SW

Owner

Name	EAGLE PROPERTIES AND INVESTMENTS LLC,
Mailing Address	445 WINDOVER AVE NW VIENNA VA 22180 4232
Book	25118
Page	0653

Parcel

Property Location	1203 COTTAGE ST SW VIENNA VA 22180
Map #	0482 03 2370
Tax District	V0000
District Name	HUNTER MILL TOWN OF VIENNA
Land Use Code	Single-family, Detached
Land Area (acreage)	
Land Area (SQFT)	10,393
Zoning Description	RS-10(10000 3.2 DU/AC)
Utilities	WATER CONNECTED SEWER CONNECTED GAS CONNECTED
County Historic Overlay District	NO For further information about Historic Overlay Districts, CLICK HERE
Street/Road	PAVED
Site Description	BUILDABLE-AVERAGE LOT

Legal Description

Legal Description	VIENNA WOODS LT 2370 SEC 13
-------------------	--------------------------------

Sales History

Date	Amount	Seller	Buyer
07/18/2017	\$550,000	MOHANDESI IRAJ A	EAGLE PROPERTIES AND INVESTMENTS LLC
06/30/2003	\$309,900	HEITZ RYAN C	MOHANDESI IRAJ A
05/22/2000	\$192,000	TAYLOR KENNETH	HEITZ RYAN C
09/27/1991	\$155,000		TAYLOR KENNETH
06/04/1980	\$78,000		

Sales

1 of 5

Date	07/18/2017
Amount	\$550,000
Seller	MOHANDESI IRAJ A
Buyer	EAGLE PROPERTIES AND INVESTMENTS LLC
Notes	Handyman special / below avg cond

Deed Book and Page 25118-0653
 Additional Notes

Values

Tax Year	2018
Current Land	\$320,000
Current Building	\$283,950
Current Assessed Total	\$603,950
Tax Exempt Note	NO

Values History

Tax Year	Land	Building	Assessed Total	Tax Exempt
2017	\$310,000	\$229,390	\$539,390	NO
2016	\$310,000	\$212,640	\$522,640	NO
2015	\$310,000	\$193,310	\$503,310	NO
2014	\$290,000	\$193,310	\$483,310	NO
2013	\$270,000	\$175,740	\$445,740	NO
2012	\$260,000	\$150,980	\$410,980	NO
2011	\$260,000	\$157,270	\$417,270	NO
2010	\$240,000	\$135,580	\$375,580	NO
2009	\$240,000	\$174,210	\$414,210	NO
2008	\$271,000	\$202,570	\$473,570	NO
2007	\$250,000	\$210,780	\$460,780	NO
2006	\$250,000	\$210,780	\$460,780	NO
2005	\$175,000	\$207,780	\$382,780	NO
2004	\$140,000	\$164,975	\$304,975	NO
2003	\$130,000	\$135,250	\$265,250	NO
2002	\$105,000	\$128,665	\$233,665	NO
2001	\$95,000	\$94,545	\$189,545	NO
2000	\$85,000	\$79,820	\$164,820	NO

Primary Building

Building Use	Single Dwelling or Patio House
Style	1 Story
Exterior Wall Material	Brick
Roof	Composition Shingle
Basement	NONE
Basement Rec Room Size (sq.ft)	
Basement Type	
Dormers	
Year Built	1960
Effective Year Built	
Year Addition	
Year House Remodeled	2017
Model Name	
Bedrooms	4
Full Baths	2
Half Baths	1
Number of Fireplaces	
# Basement Bedrooms/Dens	
Heating	Central A/C

Construction Quality/Grade A-AVERAGE
Physical Condition/CDU GD-Good

Structure Size

Above Grade Living Area Total Sq. 1,368
Ft
Basement Garage # Cars

Attached Accessory Structures

Structure	Size	% Complete
ATTACHED GARAGE	290 SQ. FT.	100%

Detached Accessory Structures

Structure	Size	% Complete	Units
DETACHED FINISHED AREA	216 SQ. FT.	100%	

Additional Details

Card Line	Structure (Lower)	Structure (First)	Structure (Second)	Structure (Third)	Year Built	Area
1	1	Frame/Brick				342
1	4	ATTACHED GARAGE				290

General Information

Need Help?

For questions and requests for information about the Real Estate site, call 703-222-8234 or [CLICK HERE](#)

Disclaimer/Privacy Policy

Under Virginia State law these records are public information. Display of this information on the Internet is specifically authorized by Va. Code 58.1-3122.2 (1998). See the [Virginia State Code](#) to read the pertinent enabling statute.

If you believe any data provided is inaccurate or if you have any comments about this site, we would like to hear from you. Owner names will be withheld from the Internet record upon request. Comments or requests may be made via e-mail to the Real Estate Division at [Real Estate Division](#) or by phone at (703) 222-8234.

While Fairfax County has attempted to ensure that the data contained in this file is accurate and reflects the property's characteristics, Fairfax County makes no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of this data. Fairfax County does not assume any liability associated with the use or misuse of this data.

Last Refresh

Date
Data last refreshed: 20/Apr/2018 DB:PORA34CUR

Source: Fairfax County Department
of Tax Administration, Real Estate Division.

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Documents Submitted By Fairfax County

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VIRGINIA:

IN THE STATE TECHNICAL REVIEW BOARD

In RE EAGLE PROPERTIES & INVESTMENTS LLC	:	
	:	
	:	
APPELLANT,	:	
	:	
v.	:	APPEAL NO. 18-15
	:	
BRIAN F. FOLEY, BUILDING OFFICIAL FOR FAIRFAX COUNTY, VIRGINIA,	:	
	:	
	:	
APPELLEE.	:	

BRIEF IN OPPOSITION TO APPELLANT’S REQUEST TO
REVERSE LOCAL BOARD’S DECISION UPHOLDING NOTICES OF VIOLATION

Brian F. Foley, the Fairfax County Building Official (“Building Official” and Appellee) states the following in opposition to Eagle Properties and Investments LLC (“Eagle”) appeal, which requests reversal of the decision by the Fairfax County Local Board of Building Code Appeals (“LBBCA”) that upheld Notices of Violation issued by Manuel Felipe (“Felipe”), technical assistant to the Building Official. The record reviewed by the LBBCA, which includes submissions from Eagle and the Building Official, is attached hereto as Exhibit 1 and is cited herein as the “LBBCA Record”.

BACKGROUND

On April 30, 2018, Felipe issued Notices of Violation of the Building Code (the “Notices of Violation”) to Eagle Properties and Investments LLC (“Eagle”) for failing to obtain building permits for construction and alterations to a single-family dwelling located at 1203 Cottage Street S.W., Vienna, Virginia (the “Property”), in violation of Part I of Uniform Statewide Building Code (“VCC”) § 108.1, and for failing to get minimum and final inspections in

violation of VCC §§ 113.3 and 113.8, respectively. The Notices of Violation allege that the work conducted without building permits included enclosing a carport and altering the interior of the structure. LBBCA Record, p. 2-16. However, the full extent of the modifications to the dwelling are unknown because no interior inspection has been performed. Eagle has not permitted one. The allegations of interior modifications are based on Investigator Felipe's review of photographs in the MLS listing, which were provided during the hearing to Local Board of Building Code Appeals ("LBBCA") and are attached as Exhibit 2.

By letter dated May 24, 2018, Eagle appealed the Notices of Violation to LBBCA. LBBCA Record, p. 31-49. Then on August 8, 2018, the LBBCA denied the appeal, upholding the validity of the Notices of Violation. Exhibit 3. Eagle filed this appeal to the State Technical Review Board ("TRB"). Eagle's appeal to the TRB is attached as Exhibit 4 and is cited herein as the "Appeal".

Eagle is the bona-fide purchaser of the Property. It claims that the majority of the alterations to the structure on the Property that are the subject of the Notices of Violation, including the enclosed carport and the modified floor plan, were completed by its predecessor. Photographs of the enclosed carport and the exterior of the dwelling are included in LBBCA Record, p. 18-30, and photos of the interior of the dwelling show a remodeled kitchen, recessed lighting, and an open floor plan, which appears to have included the removal of a load-bearing wall. Exhibit 2.

Eagle contends in its Appeal that the VCC no longer applies to the work cited in the Notices of Violation, because that work has been completed (i.e., it is no longer under construction); Va. Code § 36-106 prohibits the Building Official from enforcing violations

against Eagle, because Eagle's predecessor made the modifications that required building permits; and the minor modifications performed by Eagle do not require a building permit.

ARGUMENT

The Appeal should be denied for three reasons: (1) Work performed without a required building permit violates the VCC regardless of whether the work is "completed"; (2) Eagle is a party properly subject to enforcement under Va. Code § 36-106 (2014) for the violations alleged in the Notices of Violation; and (3) the intent of the VCC would be frustrated if Eagle (or any similarly situated owner) were not legally responsible for violations of the VCC that convey with the property.

1. Unpermitted work is and continues to be a violation until cured

Eagle erroneously contends that it is not "liable for the enclosed carport because the carport was already enclosed [before the Notices of Violation was issued]." ¹ Appeal, p. 5. In fact, when construction is performed without a required building permit, it is a violation that continues until a permit is obtained, regardless of the stage of construction. Such an interpretation is supported by the ability to enforce the VCC within one year after discovery of a violation, provided that discovery occurs within two years after a final inspection is performed.

The VCC requires that a building permit be obtained for certain construction-related work before construction can begin. VCC § 108.1. That work includes, among other things, the removal or addition of any wall, any structural component, and electrical wiring. *Id.* If work requiring a permit commences without one, it is unpermitted work, which, in and of itself, is a violation of the VCC. Any work performed in the absence of a building permit must be

¹ Under this logic—that so-called completion of work forecloses the Building Official's enforcement authority—the interior renovations, which may include the removal of a load bearing wall, would not be subject to the VCC because they, too, were "completed."

presumed to be noncompliant until inspections confirm otherwise. Without taking this initial step, no assurances can be made that the work is designed and constructed in compliance with the VCC, preventing the Building Official from performing any of his regulatory oversight.

Va. Code § 36-106(F) provides that enforcement under the VCC must conform with the time limitations in Va. Code § 19.2-8 (2008), which states that prosecution of VCC offenses must commence

within one year of discovery of the offense by the building official; provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or issuance of a certificate of use and occupancy for the building or structure, *whichever is later*.

Va. Code § 19.2-8 (emphasis added). For additions or alterations to existing buildings, the final inspection serves as the new certificate of occupancy. VCC § 113.8.

Without a final inspection of alterations to an existing home (the new certificate of occupancy), the “later” event cannot occur. This means that the Building Official’s enforcement authority over unpermitted work commences when violations are discovered and ends two years after the discovery date. Also, the status of the modifications—completed or otherwise—are irrelevant to the Building Official’s enforcement authority, which continues regardless of who owns the property when a violation is discovered. If the opposite were true, contractors and homeowners would be incentivized to skip the permitting process and race to complete the work to save money and time associated with obtaining a permit and performing interim inspections—a result antithetical to the purpose of the VCC.

2. Eagle is in violation of the VCC

Under Va. Code § 36-106, Eagle is in violation of the VCC and is the proper recipient of the Notices of Violation, because it is the owner of the Property and is currently violating the

VCC by maintaining the structure in its unpermitted state. If an owner were not always a proper party, the Building Official would be prevented from confirming that a structure was constructed to applicable standards, and, perhaps relegate it in an unsafe condition. Also, no remedy would be available under these circumstances, because no other party would have the authority to obtain the required permits, enter upon the Property or into the dwelling to perform work, or request inspections, and no court could grant such a remedy.

Va. Code § 36-106 provides that “[i]t shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any [VCC] provisions to violate any such provisions.” *See also* VCC § 115.1. VCC § 115.2 states that “the building official shall issue a written notice of violation to the responsible party if any violations of this code or any directives or orders of the building official have not been corrected or complied with in a reasonable time.” In addition to obtaining a building permit before the beginning construction activities, interim and final inspections must be performed. VCC §§ 113.3 and 113.8.

Here, the Notices of Violation allege that Eagle failed to get required building permits and perform interim and final inspections. Those violations exist today, just as they existed on the day Eagle acquired the Property. The violations, therefore, are continuing, a possibility foreseen by the General Assembly, which, as noted above, tied a building official’s enforcement authority to the date a violation is discovered. The failure to get a permit is an ongoing violation, subject to enforcement once it is discovered, and the owner of such property is legally responsible for curing any violations.

Inheriting the liability associated with a purchased property is consistent with the legal doctrine of *caveat emptor*, under which a purchaser has the burden of finding defects in a property and assumes the accompanying liability once ownership is transferred. *Norris v.*

Mitchell, 495 S.E.2d 809, 812-13, (Va. 1998) (citation omitted). This doctrine saddles the new owner with any defects acquired at the time of transfer by immunizing the seller from liability arising from a condition that went undetected by the buyer, unless the seller conceals the defective condition or deliberately withholds material facts affecting the value of the property.

Id. Here, as a matter of law, when Eagle purchased the Property it also acquired the unpermitted work and the liability associated with that condition. Eagle cannot now claim that because it purchased the property, it is not responsible for its defects.

3. Denying the appeal will uphold the purpose of the VCC

Eagle's appeal should be denied; otherwise, the purpose of the VCC would be frustrated. The purpose of the VCC "is to protect the health, safety and welfare of the residents of . . . Virginia. VCC § 102.1. "It is the duty of the any person performing work covered by the [the VCC] to comply with all applicable provision of this code and to perform and complete such work so as to secure the results intended by the [VCC]." VCC § 112.1. There is simply no way to ensure that construction adheres to the requirements of the VCC unless homeowners and contractors obtain building permits and perform the requisite inspections. Unpermitted work is necessarily difficult to discover, but its prevention is vital to ensuring the public's safety. Without the permitting and inspection process, no assurance exists that design and implementation conform to the requirements of the code. If Eagle, as owner of the Property, is immune to an enforcement action by virtue of a sale, the Building Official's authority to conduct inspections of unpermitted work would be obstructed, and Eagle, along with any other similarly situated owner, could perpetuate a potential dangerous condition, and thus prevent building officials from furthering the purpose of the code.

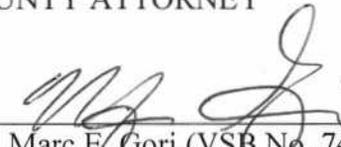
CONCLUSION

Eagle's appeal should be denied because (1) work performed without a required building permit violates the VCC regardless of whether the work is "completed"; Eagle is a party properly subject to enforcement under Va. Code § 36-106 (2014) for the violations alleged in the Notices of Violation; and the intent of the VCC would be frustrated if Eagle (or any similarly situated owner) were not legally responsible for violations of the VCC that convey with the property.

WHEREFORE, the Building Official, by counsel, respectfully requests that the TRB deny the Appeal and uphold the decision of the LBBCA.

ELIZABETH D. TEARE
COUNTY ATTORNEY

By



Marc E. Gori (VSB No. 74926)
Assistant County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064
(703) 324-2421 (tel.); (703) 324-2665 (fax)
marc.gori@fairfaxcounty.gov
Counsel for the Appellee



County of Fairfax, Virginia

MEMORANDUM

STAFF MEMORANDUM TO THE LOCAL BOARD OF BUILDING AND FIRE CODE APPEALS

HEARING DATE: August 8, 2018

APPELLANT: Eagle Properties And Investments Llc

SUBJECT PROPERTY: 1203 Cottage Street, SW
Vienna, VA 22180

CODE: 2012 Virginia Uniform Statewide Building Code

INVESTIGATOR: Manuel Felipe
Department of Code Compliance

DCC CASE #: #: 201801284 **SR#:** 147344

Staff respectfully recommends that the Fairfax County Board of Building and Fire Code Appeals (Board) uphold the determination in the Notice of Violation that the referenced property is in violation of the Virginia Uniform Statewide Building Code.

Staff Position

In response to a complaint, an inspection of the referenced property was conducted. During the inspection, the Department of Code Compliance Investigator observed the following violations. A carport was enclosed, the house is listed for sale and online pictures revealed violations. In accordance with Part I of the 2012 Virginia Uniform Statewide Building Code (USBC), and issued a Notice of Violation:

- Sect. 108.1 When applications are required
- Sect. 113.3 Minimum Inspections
- Sect. 113.8 Final Inspection

A copy of the Notice of Violation, which describes the violations, and photos from the inspection, are attached.

Appellant Position

The appellant's appeal application is attached.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, VA 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

EXHIBIT 1

Page 1 of 49
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County of Fairfax, Virginia

DCC RETURN COPY

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: April 30, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney

ADDRESS: 3970 Chain Bridge Road
Fairfax, VA 22030

LOCATION OF VIOLATION: 1203 Cottage Street S.W.
Vienna, Virginia 22180

TAX MAP REF: 0482 03 2370

CASE #: 201801284 **SR#:** 147344

ISSUING INVESTIGATOR: Manuel Felipe, (703) 324-1190

You were issued a Corrective Work Order on April 3, 2018 for violations of the Virginia Uniform Statewide Building Code (USBC) 2012 Edition, effective July 14, 2014. Staff confirmed on April 27, 2018 that the violations itemized below remain.

Explanation: On March 27, 2018, County staff inspected the above referenced residential property and discovered that construction, alterations and installations have been performed without the issuance of the required permit(s), inspections, and approvals. The construction, alterations and installations are, but not limited to, the following:

- The carport was enclosed on the subject property, which included electrical, and framing.
- The main level floor plan was altered, which included electrical and plumbing.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney
April 30, 2018
SR 147344
Page 2

Permits that may be required, but are not limited to, are the following:

- Building
- Electrical
- Mechanical
- Plumbing
- Demolition

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections, Section 113.8 Final Inspection*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within set calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Manuel Felipe to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

- BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building

Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney
April 30, 2018
SR 147344
Page 3

12055 Government Center Parkway, 2nd Floor

Fairfax, Virginia 22035
Telephone: (703) 222-0801

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703) 324-1300 who issued the Notice before coming to the Permit Application Center in the Herry Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Manuel Felipe by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703) 324-1190 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: As provided by the USBC, Section 119.5, *Right to appeal; filing of appeal application*, you have the right to appeal this decision to the Local Board of Building Code Appeals (LBBCA), within thirty (30) calendar days of receipt of this notice. You may call the secretary of the LBBCA at (703) 324-1960, TTY 711 for more information about the appeals process. Appeal application forms may be obtained by contacting:

Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703) 324-1780

Information and forms can also be obtained at:

<https://www.fairfaxcounty.gov/bacs/BoardDetails.aspx?BoardID=22001>

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the code official's decision.

Failure to correct these defects within the time limits specified shall result in enforcement action being taken under the applicable State and County Codes.

Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney
April 30, 2018
SR 147344
Page 4

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703) 324-1190 or the main office at (703) 324-1300.

Notice Issued By:



Signature

Manuel Felipe
(703)324-1190

Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney
April 30, 2018
SR 147344
Page 5

PERSONAL SERVICE J. Chapman Petersen
 Being unable to make personal service a copy was delivered in the following manner:
 Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
 Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

 Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).
 Served on a Secretary of the Commonwealth.
 Not found.
J. Hernandez 773
SERVING OFFICER
Tracey A. Kincaid, Sheriff
DATE 4/30/18 for _____
Fairfax County, VA

PERSONAL SERVICE _____
 Being unable to make personal service a copy was delivered in the following manner:
 Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
 Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

 Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).
 Served on a Secretary of the Commonwealth.
 Not found.

SERVING OFFICER
for _____
DATE _____

PERSONAL SERVICE _____
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 Served on a Secretary of the Commonwealth.
 Not found.

SERVING OFFICER
for _____
DATE _____

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SERVING OFFICER
for _____
DATE _____



County of Fairfax, Virginia

DCC RETURN COPY

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: April 30, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 1203 Cottage Street S.W.
Vienna, Virginia 22180

LOCATION OF VIOLATION: 1203 Cottage Street S.W.
Vienna, Virginia 22180

TAX MAP REF: 0482 03 2370

CASE #: 201801284 **SR#:** 147344

ISSUING INVESTIGATOR: Manuel Felipe, (703) 324-1190

You were issued a Corrective Work Order on April 3, 2018 for violations of the Virginia Uniform Statewide Building Code (USBC) 2012 Edition, effective July 14, 2014. Staff confirmed on April 27, 2018 that the violations itemized below remain.

Explanation: On March 27, 2018, County staff inspected the above referenced residential property and discovered that construction, alterations and installations have been performed without the issuance of the required permit(s), inspections, and approvals. The construction, alterations and installations are, but not limited to, the following:

- The carport was enclosed on the subject property, which included electrical, and framing.
- The main level floor plan was altered, which included electrical and plumbing.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 30, 2018
SR 147344
Page 2

Permits that may be required, but are not limited to, are the following:

- Building
- Electrical
- Mechanical
- Plumbing
- Demolition

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections, Section 113.8 Final Inspection*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within set calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Manuel Felipe to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

- BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor

Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 30, 2018
SR 147344
Page 3

Fairfax, Virginia 22035
Telephone: (703) 222-0801

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703) 324-1300 who issued the Notice before coming to the Permit Application Center in the Herry Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Manuel Felipe by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703) 324-1190 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: As provided by the USBC, Section 119.5, *Right to appeal; filing of appeal application*, you have the right to appeal this decision to the Local Board of Building Code Appeals (LBBCA), within thirty (30) calendar days of receipt of this notice. You may call the secretary of the LBBCA at (703) 324-1960, TTY 711 for more information about the appeals process. Appeal application forms may be obtained by contacting:

Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703) 324-1780

Information and forms can also be obtained at:

<https://www.fairfaxcounty.gov/bacs/BoardDetails.aspx?BoardID=22001>

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the code official's decision.

Failure to correct these defects within the time limits specified shall result in enforcement action being taken under the applicable State and County Codes.

Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 30, 2018
SR 147344
Page 4

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703) 324-1190 or the main office at (703) 324-1300.

Notice Issued By:



Signature

Manuel Felipe
(703)324-1190

Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 30, 2018
SR 147344
Page 5

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Served on a Secretary of the Commonwealth

Not found.

4/30/18 DATE

[Signature] 773
SERVING OFFICER
for Stacey A. Kincaid, Sheriff
Fairfax County, VA

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for _____



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: April 30, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover Avenue N.W.
Vienna, Virginia 22180

LOCATION OF VIOLATION: 1203 Cottage Street S.W.
Vienna, Virginia 22180

TAX MAP REF: 0482 03 2370

CASE #: 201801284 **SR#:** 147344

ISSUING INVESTIGATOR: Manuel Felipe, (703) 324-1190

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Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 30, 2018
SR 147344
Page 2

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Note:

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Eagle Properties And Investments LLC
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April 30, 2018
SR 147344
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Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 30, 2018
SR 147344
Page 4

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If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703) 324-1190 or the main office at (703) 324-1300.

Notice Issued By:



Signature

Manuel Felipe
(703)324-1190

Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 30, 2018
SR 147344
Page 5

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4/30/18 DATE

J. Hernandez 773
SERVING OFFICER
Stacey A. Kincaid, Sheriff
for
Fairfax County, VA

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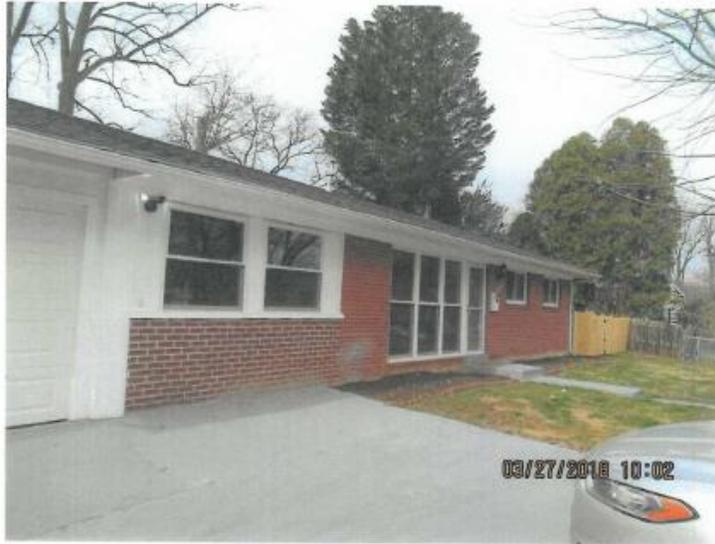
Case #: 201801284	Address: 1203 Cottage SW St Vienna, VA 22180-6705	Photographer:  Manuel Felipe, Investigator County of Fairfax, Dept. of Code Compliance
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1



Case #: 201801284	Address: 1203 Cottage S-W St Vienna, VA 22180-6705	Photographer:  Manuel Felipe, Investigator County of Fairfax, Dept. of Code Compliance
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2



Case #: 201801284 Address: 1203 Cottage S-W St
Vienna, VA 22180-6705 Photographer:
[Signature]
Manuel Felipe, Investigator
County of Fairfax, Dept. of Code Compliance



Case #: 201801284 Address: 1203 Cottage S-W St
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County of Fairfax, Dept. of Code Compliance

5



Case #: 201801284 Address: 1203 Cottage S W St
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Manuel Felipe, Investigator
County of Fairfax, Dept. of Code Compliance

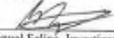
6



Case #: 201801284

Address: 1203 Cottage SW St
Vienna, VA 22180-6705

Photographer:


Manuel Felipe, Investigator
County of Fairfax, Dept. of Code Compliance

7

Page 23 of 49



Case #: 201801284

Address: 1203 Cottage SW St
Vienna, VA 22180-6705

Photographer:


Manuel Felipe, Investigator
County of Fairfax, Dept. of Code Compliance

8

Page 24 of 49



Case #: 201801284 Address: 1203 Cottage SW St
Vienna, VA 22180-6705 Photographer:
Manuel Felipe
Manuel Felipe, Investigator
County of Fairfax, Dept. of Code Compliance



Case #: 201801284 Address: 1203 Cottage SW St
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Manuel Felipe
Manuel Felipe, Investigator
County of Fairfax, Dept. of Code Compliance



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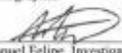
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12



Case #: 201801284	Address: 1203 Cottage SW St Vienna, VA 22180-6705	Photographer:  Manuel Felipe, Investigator County of Fairfax, Dept. of Code Compliance
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13



Case #: 201801284	Address: 1203 Cottage SW St Vienna, VA 22180-6705	Photographer:  Manuel Felipe, Investigator County of Fairfax, Dept. of Code Compliance
-------------------	--	--

14



J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

May 24, 2018

Via First-Class Mail and E-Mail

Chairman, Fairfax County Board of Building Code Appeals
12055 Government Center Parkway, Suite 334
Fairfax, Virginia 22035-5504
Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov

Re: **Building Code Appeal Request
Case #201801284; SR #147344**

Dear Secretary:

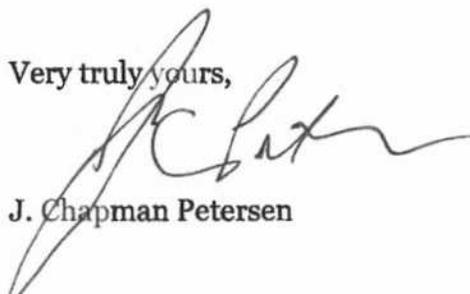
Please be advised that this firm represents Eagle Properties and Investments, LLC ("Eagle Properties"), which owns the property at 1203 Cottage Street, S.W. in the Town of Vienna.

I am in receipt of the Notice of Violation issued on April 30, 2018 (the "Order") in the above-referenced case. This letter is to confirm an appeal request of the Order on behalf of Eagle Properties.

As required by Part I of the Virginia Uniform Statewide Building Code 2012, Section 119.5., please find enclosed (i) the written request for appeal, (ii) a copy of the building official's decision and (iii) relevant documents thereto.

If you have any further questions or concerns, please contact me.

Very truly yours,



J. Chapman Petersen

Enclosures as stated
Cc: client



Building Code Appeal Request

PROJECT INFORMATION

Project Name: N/A
 Project Address: 1203 Cottage Street S.W., Vienna, Virginia 22180
 Permit or case number: 201801284 Tax map number: 0482 03 2370

APPLICANT INFORMATION

Applicant Name: J. Chapman Petersen, Esq. Owner Owner's agent
 Address: 3970 Chain Bridge Road
 City: Fairfax State: VA ZIP: 22030
 Phone: 571-459-2510 Email: jcp@petersenfirm.com

OWNER INFORMATION

See applicant information
 Owner Name: Eagle Properties and Investments LLC
 Address: 445 Windover Avenue
 City: Vienna State: VA ZIP: 22180
 Phone: 571-436-3545 Email: amit@eagleinvestmentsllc.com

APPEAL INFORMATION

Appealing decision made on the date of by Building Official Fire Official Property Maintenance Official rendered on the following date: -
 Code(s) (IBC, IMC, IPMC, etc.) and year-edition: Virginia Uniform Statewide Building Code ("USBC") 2012
 Section(s): Sections 108.1, 113.3, and 113.8.

REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:

Minor and ordinary repair work were made to 1203 Cottage Street S.W., Vienna, VA 22180 (the "Property") since the current owner purchased the Property in July 18, 2017 (the "2017 Purchase"). As per the USBC 2012, the current "owner" made no alterations (as alleged in the Notice of Violation) that would require Building, Electrical, Mechanical, Plumbing, or Demolition permits.

The "main floor plan" was never "altered" by the current owner as alleged on the Notice of Violation. As per the "enclosed carport," there is a one-car garage which is and has been enclosed prior to the 2017 Purchase.

Therefore, the current "owner" cannot be liable for failing to obtain permits as alleged in the Notice of Violation. The current owner undertook minor and ordinary repair work that did not adversely affect public health or general safety in any way.

Please return the completed form and any supporting documentation to the address or email below.

Chairman, Fairfax County Board of Building Code Appeals -
 12055 Government Center Parkway, Suite 334 -
 Fairfax, VA 22035-5504 -
 Attention: Secretary to the Board -
buildingofficial@fairfaxcounty.gov



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: April 30, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney

ADDRESS: 3970 Chain Bridge Road
Fairfax, VA 22030

LOCATION OF VIOLATION: 1203 Cottage Street S.W.
Vienna, Virginia 22180

TAX MAP REF: 0482 03 2370

CASE #: 201801284 **SR#:** 147344

ISSUING INVESTIGATOR: Manuel Felipe, (703) 324-1190

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Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney
April 30, 2018
SR 147344
Page 2

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Permit Application Center
The Herrity Building

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April 30, 2018
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12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703) 324-1780

Information and forms can also be obtained at:

<https://www.fairfaxcounty.gov/bacs/BoardDetails.aspx?BoardID=22001>

Failure to submit an application for appeal within the time limit established shall constitute acceptance of the code official's decision.

Failure to correct these defects within the time limits specified shall result in enforcement action being taken under the applicable State and County Codes.

Chap Petersen & Associates
c/o J. Chapman Petersen, Attorney
April 30, 2018
SR 147344
Page 4

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703) 324-1190 or the main office at (703) 324-1300.

Notice Issued By:



Signature

Manuel Felipe
(703)324-1190



**CHAP PETERSEN
& ASSOCIATES, PLC**

J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

April 30, 2018

Via First-Class Mail

Fairfax County Department of Code Compliance
c/o Manuel Felipe, Investigating Officer
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508

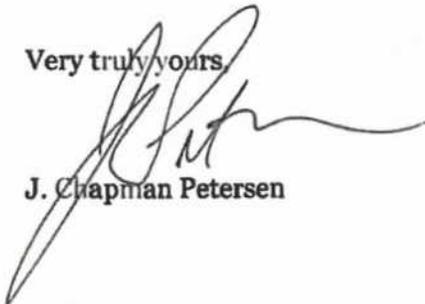
Re: **Notice of Violation**
Case #201801284; SR #147344

Dear Mr. Felipe:

I am in receipt of the Notice of Violation issued on April 30, 2018 (the "Order") in the above-referenced case. This letter is to confirm receipt of the Order.

If you have any further questions or concerns, please contact me.

Very truly yours,



J. Chapman Petersen

Cc: client



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

CORRECTIVE WORK ORDER Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: April 03, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover Avenue N.W.
Vienna, Virginia 22180

LOCATION OF VIOLATION: 1203 Cottage Street S.W.
Vienna, Virginia 22180

TAX MAP REF: 0482 03 2370

CASE #: 201801284 **SR#:** 147344

ISSUING INVESTIGATOR: Manuel Felipe, (703) 324-1190

In accordance with Part I of the Virginia Uniform Statewide Building Code (USBC) 2012 Edition, effective July 14, 2014 an inspection on March 27, 2018 revealed a violation or violations as listed below at the referenced residential location. The cited violation(s) must be corrected within thirty (30) calendar days from receipt of this notice unless otherwise indicated.

Explanation: On March 27, 2018, County staff inspected the above referenced property and discovered that construction, alterations and installations have been performed without the issuance of the required permit(s), inspections, and approvals. The construction, alterations and installations are, but not limited to, the following:

- The carport was enclosed on the subject property, which included electrical, and framing.
- The main level floor plan was altered, which included electrical and plumbing.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-4659 TTY 711
www.fairfaxcounty.gov/code

Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 03, 2018
SR 147344
Page 2

Permits that may be required, but are not limited to, are the following:

- Building
- Electrical
- Mechanical
- Plumbing
- Demolition

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections, Section 113.8 Final Inspection*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Manuel Felipe to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

- e BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.

Once the permit is issued, call (703) 631-5101, TTY 711 to schedule all building inspections related to this matter. Please reference Case 201801284. Failure to call for the required inspections within ten (10) calendar days will result in a separate Notice of Violation. This notice must be available for County field staff throughout the inspection process.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center

Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 03, 2018
SR 147344
Page 3

The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: (703) 222-0801

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703) 324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Manuel Felipe by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703) 324-1190 within three (3) working days from the date you receive this Order. Failure to do so shall result in the immediate issuance of a Notice of Violation and the initiation of legal action to bring the above referenced property into compliance with the USBC.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703) 324-1190 or the main office at (703) 324-1300.

Notice Issued By:



Signature

Investigator, Manuel Felipe
(703) 324-1190
Manuel.Felipe@fairfaxcounty.gov
Technical Assistant to the Building Official
Department of Code Compliance

CC: Case File



**CHAP PETERSEN
& ASSOCIATES, PLC**

J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

April 23, 2018

**Via electronic mail Jack.Weyant@fairfaxcounty.gov
and first-class mail**

Jack W. Weyant, PE, Director
Fairfax County Department of Code Compliance
12055 Government Center Parkway, Suite 1006
Fairfax, VA 22035-5500

Re: *1203 Cottage Street, S.W., Vienna VA 22180*

Dear Mr. Weyant:

Please be advised that this firm represents Eagle Properties and Investments, LLC ("Eagle Properties"), which owns the property at 1203 Cottage Street, S.W. ("the Property") in the Town of Vienna.

We are in receipt of a "Corrective Work Order" dated April 3, 2018 from the Fairfax County Department of Code Compliance ("the Department"). The references an "inspection" of March 27, 2018 which occurred at the Property and apparently found "constructions, alterations and installations" which had been made at the Property. Specifically, the Department found that:

- "The carport was enclosed ... which included electrical, and framing."
- "The main level floor plan was altered, which included electrical and plumbing."

We are not aware of that March 27th inspection taking place. My client did not give permission for anyone to enter the Property. Therefore, I'm not sure how it could have been "inspected" without that permission.

Here is a brief history: my client purchased the Property on July 18, 2017. Since that time, it has made several improvements to the Property, including new granite countertops and kitchen flooring, renovated bathrooms, new roof and windows, and a stone patio in the backyard. It has made no structural alterations to the Property which would require pulling permits. As far as the carport, there is a one-car garage which is and has been enclosed prior to the 2017 purchase. As

Letter to Fairfax County, Dept. of Code Compliance
April 23, 2018

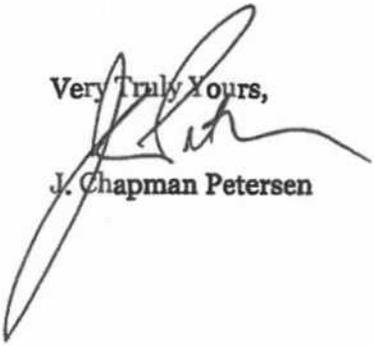
you know, my client cannot be held responsible for work that occurred prior to its purchase, as it was a *bona fide* purchaser in due course.

Notably, my client has been in communication with the Town of Vienna for the past several months regarding its work on the Property. It never was directed to apply for or obtain any permits, either for construction or demolition.

In summary, the Property is structurally the same residence purchased by my client in July 2017, with some discrete upgrades. There is no evidence that it is non-compliant with County Code. We do not consent to have the Department "inspect" the Property, as there is simply no valid reason to do so. Please be advised that the April 25th meeting will not be taking place.

Thank you. Please feel free to contact me with any questions.

Very Truly Yours,


J. Chapman Petersen

jcp
copy:

client



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

CORRECTIVE WORK ORDER Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: April 03, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties And Investments LLC
o/o Monika Jain, Registered Agent

ADDRESS: 445 Windover Avenue N.W.
Vienna, Virginia 22180

LOCATION OF VIOLATION: 1203 Cottage Street S.W.
Vienna, Virginia 22180

TAX MAP REF: 0482 03 2370

CASE #: 201801284 **SR#:** 147344

ISSUING INVESTIGATOR: Manuel Felipe, (703) 324-1190

In accordance with Part I of the Virginia Uniform Statewide Building Code (USBC) 2012 Edition, effective July 14, 2014 an inspection on March 27, 2018 revealed a violation or violations as listed below at the referenced residential location. The cited violation(s) must be corrected within thirty (30) calendar days from receipt of this notice unless otherwise indicated.

Explanation: On March 27, 2018, County staff inspected the above referenced property and discovered that construction, alterations and installations have been performed without the issuance of the required permit(s), inspections, and approvals. The construction, alterations and installations are, but not limited to, the following:

- The carport was enclosed on the subject property, which included electrical, and framing.
- The main level floor plan was altered, which included electrical and plumbing.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-5459 TTY 711
www.fairfaxcounty.gov/code

Bagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 03, 2018
SR 147344
Page 2

Permits that may be required, but are not limited to, are the following:

- Building
- Electrical
- Mechanical
- Plumbing
- Demolition

Order: Pursuant to the USBC, *Section(s) 106.1 When applications are required, Section 113.3 Minimum Inspections, Section 113.8 Final Inspection*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Mammel Felipe to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

- **BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.**

Once the permit is issued, call (703) 631-5101, TTY 711 to schedule all building inspections related to this matter. Please reference Case 201801284. Failure to call for the required inspections within ten (10) calendar days will result in a separate Notice of Violation. This notice must be available for County field staff throughout the inspection process.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center

Eagle Properties And Investments LLC
c/o Monika Jain, Registered Agent
April 03, 2018
SR 147344
Page 3

The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: (703) 222-0801

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703) 324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Manuel Felipe by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703) 324-1190 within three (3) working days from the date you receive this Order. Failure to do so shall result in the immediate issuance of a Notice of Violation and the initiation of legal action to bring the above referenced property into compliance with the USBC.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703) 324-1190 or the main office at (703) 324-1300.

Notice Issued By:



Signature

Investigator, Manuel Felipe
(703) 324-1190
Manuel.Felipe@fairfaxcounty.gov
Technical Assistant to the Building Official
Department of Code Compliance

CC: Case File

Rev. 1/2/18



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

April 25, 2018

J. Chapman Petersen
Chap Petersen & Associates
3970 Chain Bridge Road
Fairfax, VA 22030

Re: 1203 Cottage Street, S.W., Vienna, VA 22180

Mr. Petersen:

As discussed in our telephone conversation yesterday, April 24, 2018, I am responding to address the concerns of your April 23, 2018 letter regarding the property located at 1203 Cottage Street.

As background, the Department of Code Compliance (DCC) is a complaint-driven agency that responds to complaints from citizens or the public in general, related to possible zoning, property maintenance, fire, and building code violations. On March 3, 2018, a complaint was received against the 1203 Cottage Street property concerning unpermitted construction, interior renovations without the appropriate electrical, plumbing, and mechanical permits. The case was assigned to Manuel Felipe, one of our DCC building inspectors who investigates unpermitted construction.

Prior to conducting an onsite investigation, Mr. Felipe researched Fairfax County records to establish the property history, property ownership, and to confirm that no permits have been issued for any new or recent work at the property. On March 27, 2018, Mr. Felipe visited the property and finding no one present at the residence, left a 'door tag' requesting that the property owner contact him to discuss the case. A visual inspection of the front of the structure indicated that the garage had been added to the original structure; however, there were no permits on file for that work.

Upon noticing a For Sale sign in the front yard, Mr. Felipe reviewed the MRIS listing and found photographs indicating the possible removal of interior walls, new kitchen construction, new bathroom construction, and other improvements, none of which were permitted with Fairfax County.

On April 3, 2018, as is normal protocol for DCC, a Corrective Work Order (CWO) was delivered to the property owner by the Fairfax County Sheriff, establishing the violations and requesting a meeting with Mr. Felipe to discuss a plan for achieving compliance for all unpermitted work.

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Following my phone conversation with the property owner, a meeting was held on April 19, 2018 with the property owner, his employee, Mr. Felipe and me, to discuss the violations and establish a plan for achieving compliance. After that meeting, a date of Wednesday, April 25, 2018 was established for Mr. Felipe to visit the property and inspect the interior and exterior of the structure. Upon completion of that inspection, staff would be able inform the property owner of the requirements to achieve compliance for the violations, which would likely involve the preparation of plans, the submittal and approval of plans, inspections by County staff, and final release of the permits. As your letter states that there is no reason to meet on the 25th, that meeting was canceled and Mr. Felipe will move forward with the next step in the process, which is to issue a Notice of Violation (NOV) to the property owner, with a specified timeframe for compliance established. As with the CWO, the NOV will be served to the property owner by one of our DCC sheriffs. Upon issuance of that NOV, Mr. Felipe will be available to meet with the property owner to discuss a plan and a timeframe to achieve compliance.

I hope this information satisfies your concerns; however, if you have further questions or require additional information, please contact me at 703-324-9330.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack W. Weyant", with a long horizontal line extending to the right.

Jack W. Weyant, P.E., Director
Fairfax County Department of Code Compliance

cc: Manuel Felipe
David Stoner, Fairfax County Office of the County Attorney

REDFIN City, Address, School

1-844-759-7732

Buy

Sell

Real Estate Agents

Log In

Sign Up

1203 Cottage St SW
Vienna, VA 22180

\$660,000

Price

Redfin Estimate: \$647,531 On Redfin: 146 days
Status: Active

4

Beds

3.5

Baths

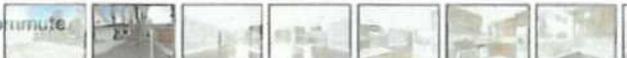
1,368 Sq. Ft.

\$482 / Sq. Ft.

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-- min · Add a Commute



Listed by Ajay Kasana · S 4 Realty

REDFIN City, Address, School

1-844-759-7732

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Real Estate Agents

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Vienna, VA 22180

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2018 MRIS



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City, Address, School

1-844-759-7732

Buy

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1203 Cottage St SW
Vienna, VA 22180

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2018 MRIS



Map data ©2018 Google



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1-844-759-7732

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Sell •

Real Estate Agents

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1203 Cottage St SW
Vienna, VA 22180

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1,368 Sq. Ft.

\$482 / Sq. Ft.

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2018 MRIS



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REDFIN City, Address, School

1-844-759-7732

Buy

Sell

Real Estate Agents

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1203 Cottage St SW
Vienna, VA 22180

\$660,000

Price

Redfin Estimate: \$647,531 On Redfin: 146 days
Status: Active

4
Beds

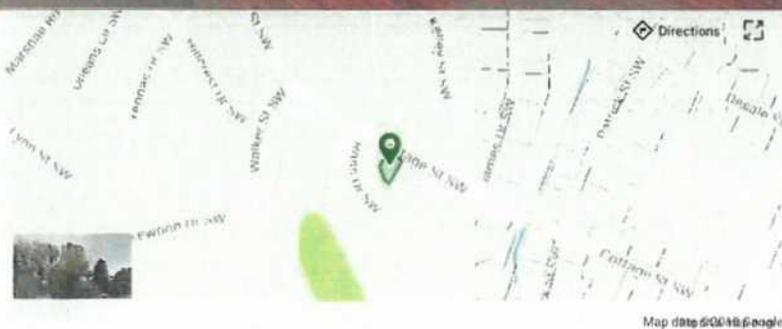
3.5
Baths

1,368 Sq. Ft.
\$482 / Sq. Ft.

[Go Tour This Home](#)



2018 MRIS



-- min · Add a Co



Listed by Ajay Kasana · S 4 Realty

RESOLUTION

WHEREAS, the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of enforcement of the USBLD. Code/ 2012 Edition; and

WHEREAS, an appeal has been timely filed and brought to the attention of the Board; and
WHEREAS, a hearing has been duly held to consider the aforementioned appeal; and
WHEREAS, the Board has fully deliberated this matter; now, therefore, be it

RESOLVED, that the matter of

Appeal No. 180524.0 AP
In RE: EAGLE PROPERTIES / INVENT. v. FAIRFAX COUNTY DCC

The appeal is hereby DENIED for the reasons set out below.

AS INDICATED BY FC DCC A CARPORT WAS ENCLOSED WITHOUT A PERMIT AND NECESSARY INSPECTIONS AND THE MAIN LEVEL FLOOR PLAN WAS MODIFIED WITHOUT A PERMIT AND NECESSARY INSPECTIONS.

FURTHER, be it known that:

- 1. This decision is solely for this case and its surrounding circumstances;
- 2. This decision does not serve as a precedent for any future cases or situations, regardless of how similar they may appear;
- 3. (If appropriate to the motion) No significant adverse conditions to life safety will result from this action; and
- 4. All of the following conditions be observed.
 - a. N/A
 - b. _____
 - c. _____

Date: AUGUST 8, 2018

Signature: 
Chairman, Board of Building Code Appeals

Note: Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219 or by calling 804.371.7150.

Carla Guerra-Morris hereby certify that this is
CUSTODIAN
a true copy of a Fairfax County Department of Land Development
Services record of which I am a custodian

Carla Guerra-Morris
CUSTODIAN

Brian Foley hereby certify that this is
SUPERVISOR OF CUSTODIAN
a true copy of a Fairfax County Department of Land Development
Services record of which Carla Guerra-Morris is the
CUSTODIAN
custodian and that Carla Guerra-Morris reports to me.
CUSTODIAN
Brian Foley
SUPERVISOR OF CUSTODIAN

VIRGINIA:

State Building Code Technical Review Board

In RE Eagle Properties & Investments LLC)	
Appellant)	
v.)	Appeal No. 180524.0 AP
Fairfax County DDC)	
Appellee)	

APPELLANT’S STATEMENT OF SPECIFIC RELIEF SOUGHT

COMES NOW Appellant Eagle Properties and Investments LLC (“Eagle”), by counsel, pursuant to the Uniform State Building Code, 2012 Edition (“USBC”), § 119.8, and Virginia Code 13VAC5-63-190(H) and §36-114, hereby states the following in support of its Statement of Specific Relief Sought:

Statement of Facts

The property subject to this appeal is 1203 Cottage Street, S.W., located in the Town of Vienna, Virginia (the “Property”). Appellant purchased the property on July 18, 2017. After purchasing the property, Eagle made certain alterations such as installing new granite countertops, kitchen flooring, a new roof, windows, a stone patio in the backyard, and it renovated bathrooms.

On April 30, 2018, the Appellee issued a Notice of Violation (“NOV”) against appellant alleging certain violations of the USBC. Specifically, the NOV alleged certain construction, alterations and installations were performed without the issuance of the required permits. Namely, a “carport was enclosed on the subject property, which

included electrical, and framing” and the “main level floor plan was altered, which included electrical and plumbing.” Pursuant to USBC, § 119.5., Eagle appealed the NOV to the LBBCA, which was denied on August 8, 2018. Eagle now seeks relief before this body.

This appeal concerns three (3) issues: (i) whether Eagle can be imposed a criminal penalty for the enclosure of the carport which it never installed; (ii) whether Eagle can be liable for the minor, ordinary, alterations it made without the issuance of permits as alleged in the NOV; and (iii) if any exceptions of the USBC apply to the alterations made by Eagle.

Jurisdiction

The General Assembly established the Review Board and gave it “the power and duty to hear all appeals from decisions [of the local board of Building Code appeals] arising under application of the Building Code.” Code § 36-114. “Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).” *Id.* “[N]o appeal to the . . . Review Board shall lie prior to a final determination by the local board of Building Code Appeals” (“LBBCA”). Code § 36-105. Here, the LBBCA has issued its resolution and therefore this body has jurisdiction over this appeal.

Standard of Review

On appeal of an agency decision,

the sole determination as to factual issues is whether substantial evidence exists in the agency record to support the agency's decision. The reviewing court may reject the agency's findings of fact only if, considering the record as a whole, a reasonable mind necessarily would come to a different conclusion.

Avalon Assisted Living Facilities v. Zager, 39 Va. App. 484, 499-500 (2002) (quoting *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 242, 369 S.E.2d 1, 7, 4 Va. Law Rep. 2665 (1988)). In making this determination, “the reviewing court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.” *Id.* On review of an agency's decision, the sole question regarding “factual issues is whether substantial evidence exists in the agency record to support the agency's decision.” *Strawbridge v. County of Chesterfield*, 23 Va. App. 493, 503 (1996) (quoting *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 242, 369 S.E.2d 1, 7 (1988)).

“On appeal of an agency's determination on issues of law, the standards differ.”

If the issue falls outside the area generally entrusted to the agency, and is one in which the courts have special competence, i.e., the common law or constitutional law, the court need not defer to the agency's interpretation.

Id. at 243-44, 369 S.E.2d at 8 (quoting *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 914-15 (3d Cir. 1981)) (internal quotations omitted).

However, where the question involves an interpretation which is within the specialized competence of the agency and the agency has been entrusted with wide discretion by the General Assembly, the agency's decision is entitled to special weight in the courts[, and] . . . “judicial interference is permissible only for relief against the arbitrary or capricious action that constitutes a clear abuse of delegated discretion.” *Id.* at 244, 369 S.E.2d at 8 (quoting *Va. Alcoholic Beverage Control Comm'n v. York St. Inn, Inc.*, 220 Va. 310, 315, 257 S.E.2d 851, 855 (1979) (quoting *Schmidt v. Bd. of Adjustment*, 9 N.J. 405, 88 A.2d 607, 615-16 (N.J. 1952)). “No matter how one calibrates judicial deference, the administrative power to interpret a regulation does not include the power to rewrite it.” *Bd. of Supervisors v. State Bldg. Code Tech. Review*

Bd., 52 Va. App. 460, 466 (2008). Courts are required only “to accept only those agency interpretations that are reasonable in light of the principles of construction courts normally employ.” *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 260, 111 S. Ct. 1227, 113 L. Ed. 2d 274 (1991) (Scalia, J., concurring).

“One of the important purposes of the Building Code is to provide for ‘the safety of ultimate construction.’” *Virginia Electric & Power Co. v. Savoy Constr. Co.*, 224 Va. 36, 44 (1982). Another important purpose of the Building Code is to “enhance the safety of those working on the project and, indeed, the safety of the project itself.” *Id.* “The dominant purpose of the Building Code, therefore, is to provide comprehensive protection of the public health and safety.” *Id.*

Building code violations are “deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than \$2,500.” Code § 36-106. The statute further provides that “each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense” and that “if the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code.” *Id.* The Building Code must be construed “broadly enough to give substantial effect to this manifest legislative purpose without disregarding its penal effects.” *Id.* (citing 3 *Sutherland Statutory Construction* § 59.05, at 16-17 (4th ed. C. Sands 1974)).

Relief Sought

I. The Enclosed Carport

Virginia Code § 36-106 states: “It shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any Code provisions, to violate any such provisions.” The Virginia Supreme Court has held that “[T]he provisions of the Building Code apply at any stage during construction to any work that has been done.” *Savoy* at 44.

There must be compliance with the Building Code not only when work is performed but also when work required by the Building Code should be done to safeguard persons and property. Compliance only upon completion of the entire project in many instances may be sufficient, but earlier compliance is necessary where danger may arise from delay in the performance of required work.

Id. at 45. Applying the USBC to hold Eagle liable for the enclosed carport is not permissible upon a plain reading of Virginia Code § 36-106, as the carport was already enclosed when Eagle purchased the Property. The Virginia Supreme Court has been clear as to when the provisions of the USBC apply. *Savoy* at 43-45. Clearly, this is not a scenario envisioned by the Virginia Supreme Court to which the USBC shall apply. *Id.*

A penal statute must be strictly construed, *Rollins v. Gordonsville*, 216 Va. 25, 215 S.E.2d 637 (1975), and violation of the Building Code may result in criminal sanctions. In other words, imposing liability upon Eagle, an innocent, bona-fide purchaser, for the acts of the previous owner of the Property, does not fall within the scope of § 36-106. Therefore, Eagle cannot be liable for the enclosed carport. *See* Code § 36-106 and *Savoy* at 43-45. This position is further support by § 108 of the USBC which, in pertinent part, states: “Application for a permit shall be made to the building official and a permit shall be obtained prior to the commencement of any of the following activities ...” USBC § 108.1. To hold otherwise is to go against the Supreme Court’s reasoning. *Savoy* at 43-45.

II. Main Level Floor Plan

The only alterations Eagle has conceded remotely relating to the main floor plan being altered is that it made improvements to the kitchen flooring. An application for permit is not required for such an improvement. USBC § 108.1. Matter of fact, the USBC contains several exemptions from application for permit. USBC § 108.2. Among those exceptions are ordinary repairs, which includes "Installation or replacement of floor finishes in all occupancies." USBC § 108.2(14.7). This is exactly what Eagle did. Therefore, Eagle was not required to seek any permits for its improvements to the kitchen floor, as installation or replacement of floor finishes are exempted under the USBC. *Id.* Furthermore, Eagle's improvement to the kitchen flooring also falls within the scope of exemption 14.11: "Other repair work deemed by the building official to be minor which does not adversely affect public health or general safety." USBC § 108.2(14.11). Further, there is no evidence to implicate that Eagle altered the main floor plans. If anything, it was the previous owner and the holding in *Savoy* requires that Eagle not be liable under the USBC for the acts of the previous owner. *Savoy* at 43-45.

WHEREFORE Eagle Properties and Investments LLC seeks that the decision of the LBBCA be reversed and overturned for the reasons set forth herein.

**Eagle Properties and Investments LLC
By Counsel**



J. Chapman Petersen, Esq., VSB #37225
David L. Amos, Esq., VSB #87271
CHAP PETERSEN & ASSOCIATES, PLC
3970 Chain Bridge Road
Fairfax, Virginia 22030
(571) 459-2510 (direct dial)
(571) 459-2307 (facsimile)
jcp@petersenfirm.com
dla@petersenfirm.com

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Eagle Properties and Investments LLC
Appeal No. 18-19

CONTENTS

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Documents Submitted by Eagle Properties and Investments	321
Documents Submitted by Fairfax County	329

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Eagle Properties and Investments, LLC.
Appeal No. 18-19

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. Eagle Properties and Investments, LLC (Eagle Properties) owner of the property located at 449 Lawyers Road, N. W. in the Town of Vienna, appeals the citations under Part I of the Uniform Statewide Building Code (Virginia Construction Code or VCC) by the Fairfax County Department of Code Compliance (County).

2. On May 24, 2018 a Corrective Work Order (CWO) was issued for violations of the 2012 VCC. On July 17, 2018 permits were issued for the Lawyers Road property for “Alterations to repair front concrete stairs, porch, and install iron railing per plan. Alterations to 2 story rear addition: remove and frame in windows (non-structural)”. On July 19, 2018, a representative of the County investigated the Lawyers Road property resulting in the issuance of a Notice of Violation (NOV) dated July 24, 2018 citing several violations of VCC related to work performed without permits, inspections, and approvals, to include but not limited to, construction of a new two story addition on the rear of the structure, construction of a new rear deck, remodeling of the kitchen, and installation of new living room lighting. Eagle Properties asserts that the cited work described in the NOV requiring permits was not performed by Eagle Properties who purchased the property in late 2017. Eagle Properties acknowledges they performed minor and ordinary repair work on the property and asserts that they purchased the required permits for that work.

(Page left blank intentionally)

3. Eagle Properties filed a timely appeal to the Fairfax County Board of Building Code Appeals (County appeals board). The County appeals board subsequently conducted a hearing and ruled to uphold the NOV.

4. Eagle Properties further filed a timely appeal to the Review Board.

5. Review Board staff drafted this staff document and forwarded it to the parties along with a copy of all documents 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 Issues for Resolution by the Review Board

1. Whether the County violated the Fourth Amendment rights and property rights of Eagle Properties.

2. Whether to overturn the decision of County and the County appeals board that Eagle Properties is the responsible party for the cited violations.

If so, then:

3. Whether to overturn the decisions of County and the County appeals board that violations of VCC Section 108.1 exists.

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Basic Documents

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County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

CORRECTIVE WORK ORDER Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: May 24, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 449 Lawyers Rd., NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd., NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

In accordance with Part I of the Virginia Uniform Statewide Building Code (USBC) 2012 Edition, effective July 14, 2014 an investigation on May 23, 2018 revealed violations as listed below at the referenced residential location. The cited violations must be corrected within 30 calendar days from receipt of this notice unless otherwise indicated.

Explanation: On May 23, 2018, County staff investigated the above referenced premises and discovered that construction, alterations and installations have been performed without the issuance of the required permits, inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

Front Porch-

- The front entrance concrete porch with steps have been reconstructed. New concrete landing and steps installed changing the riser height/tread length geometry of the steps; measurements taken revealed the highest riser approximately nine (9") inches, the lowest riser height seven (7"), more than 3/8" difference in height throughout the flight of steps.
- The landing height to grade exceeds 30", thereby requiring a guard rail. The existing iron guard rail was re-installed. The configuration of the guard rail is inconsistent with the configuration

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
May 24, 2018
SR 149506
Page 2

of the new landing and steps. The rail length is too short to reach the dwelling brick wall for support. A wood frame has been installed between the house wall and the termination of the railing. The rail height, measured from the tread nosing does not meet the minimum required height of thirty-four (34") inches throughout the flight of stairs.

Rear Addition-

- The addition has been altered by removing windows on both upper and lower levels.
NOTE: Access to perform an investigation of the interior was denied.

The permits required are, but not limited to, the following: Building, Electrical, Mechanical, Plumbing or Demolition.

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within 10 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Al Sanchez to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

- BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.
- Contact me at (703)324-9321, TTY 711 within the timeframe established below to confirm the violations(s) have been abated.

Once the permit is issued, call 703-631-5101, TTY 711 to schedule all building inspections related to this matter. Please reference Case 201802768. Failure to schedule the required inspections within 20 days will initiate issuance of a Notice of Violation. This Order must be available for County Inspectors throughout the inspection process.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
May 24, 2018
SR 149506
Page 3

and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801

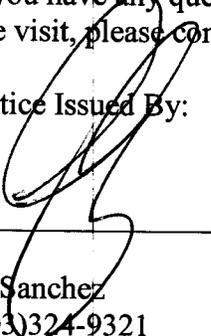
*When work described above involves the removal of unpermitted features (including appliances, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Al Sanchez by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-9321 within three (3) working days from the date you receive this Order. Failure to do so shall result in the immediate issuance of a Notice of Violation initiating legal enforcement to bring the above referenced property into compliance with the USBC.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

Notice Issued By:



Signature

Al Sanchez
(703)324-9321
Al.Sanchez@fairfaxcounty.gov
Technical Assistant to the Building Official
Department of Code Compliance

CC: Case File
Guy Tomberlin, Residential Inspections Branch Chief

PERSONAL SERVICE _____
 Being unable to make personal service a copy was delivered in the following manner:
 Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
 Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

 Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).
 Served on a Secretary of the Commonwealth.
 Not found.

T. Ayoub 0771
SERVING OFFICER
5-25-18 Stacey A. Kincaid, Sheriff
DATE Fairfax County, VA

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 Not found.

SERVING OFFICER
for _____
DATE



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

CORRECTIVE WORK ORDER Virginia Uniform Statewide Building Code

DATE OF ISSUANCE: May 24, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover AV NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd. NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

In accordance with Part I of the Virginia Uniform Statewide Building Code (USBC) 2012 Edition, effective July 14, 2014 an investigation on May 23, 2018 revealed violations as listed below at the referenced residential location. The cited violations must be corrected within 30 calendar days from receipt of this notice unless otherwise indicated.

Explanation: On May 23, 2018, County staff investigated the above referenced premises and discovered that construction, alterations and installations have been performed without the issuance of the required permits, inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

Front Porch-

- The front entrance concrete porch with steps have been reconstructed. New concrete landing and steps installed changing the riser height/tread length geometry of the steps; measurements taken revealed the highest riser approximately nine (9") inches, the lowest riser height seven (7"), more than 3/8" difference in height throughout the flight of steps.
- The landing height to grade exceeds 30", thereby requiring a guard rail. The existing iron guard rail was re-installed. The configuration of the guard rail is inconsistent with the configuration

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
May 24, 2018
SR 149506
Page 2

of the new landing and steps. The rail length is too short to reach the dwelling brick wall for support. A wood frame has been installed between the house wall and the termination of the railing. The rail height, measured from the tread nosing does not meet the minimum required height of thirty-four (34") inches throughout the flight of stairs.

Rear Addition-

- The addition has been altered by removing windows on both upper and lower levels.
NOTE: Access to perform an investigation of the interior was denied.

The permits required are, but not limited to, the following: Building, Electrical, Mechanical, Plumbing or Demolition.

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within 10 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Al Sanchez to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

- BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.
- Contact me at (703)324-9321, TTY 711 within the timeframe established below to confirm the violations(s) have been abated.

Once the permit is issued, call 703-631-5101, TTY 711 to schedule all building inspections related to this matter. Please reference Case 201802768. Failure to schedule the required inspections within 20 days will initiate issuance of a Notice of Violation. This Order must be available for County Inspectors throughout the inspection process.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
May 24, 2018
SR 149506
Page 3

and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801

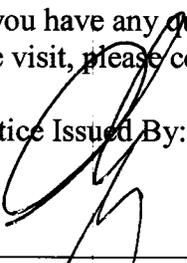
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*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Al Sanchez by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-9321 within three (3) working days from the date you receive this Order. Failure to do so shall result in the immediate issuance of a Notice of Violation initiating legal enforcement to bring the above referenced property into compliance with the USBC.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

Notice Issued By:



Signature

Al Sanchez
(703)324-9321
Al.Sanchez@fairfaxcounty.gov
Technical Assistant to the Building Official
Department of Code Compliance

CC: Case File
Guy Tomberlin, Residential Inspections Branch Chief

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T. Ayoub 0771
SERVING OFFICER
S-25-18 Stacey A. Kincaid, Sheriff
DATE Fairfax County, VA

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SERVING OFFICER
for _____
DATE



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Construction Code

DATE OF ISSUANCE: July 2, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 449 Lawyers Rd., NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd., NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

You were issued a Corrective Work Order on May 24, 2018 for violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition, effective July 14, 2014. Staff confirmed on July 2, 2018 that the violations itemized below remain.

Explanation: On May 23, 2018, County staff investigated the above referenced premises and discovered that construction, alterations and installations have been performed without the issuance of the required permits, inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

Front Porch-

- The front entrance concrete porch with steps have been reconstructed. New concrete landing and steps installed changing the riser height/tread length geometry of the steps; measurements taken revealed the highest riser approximately nine (9") inches, the lowest riser height seven (7"), more than 3/8" difference in height throughout the flight of steps.
- The landing height to grade exceeds 30", thereby requiring a guard rail. The existing iron guard rail was re-installed. The configuration of the guard rail is inconsistent with the configuration of the new landing and steps. The rail length is too short to reach the dwelling brick wall for

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12055 Government Center Parkway, Suite 1016
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Phone 703-324-1300 Fax 703-653-9459 TTY 711
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Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 2, 2018
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Page 2

support. A wood frame has been installed between the house wall and the termination of the railing. The rail height, measured from the tread nosing does not meet the minimum required height of thirty-four (34") inches throughout the flight of stairs.

Rear Addition-

- The addition has been altered by removing windows on both upper and lower levels.
NOTE: Access to perform an investigation of the interior was denied.

The permits required are, but not limited to, the following: Building, Electrical, Mechanical, Plumbing or Demolition.

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within 10 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Al Sanchez to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

- Contact me at (703)324-9321, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 2, 2018
SR 149506
Page 3

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Al Sanchez by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-9321 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: Per Sect. 119 of the Virginia Construction Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 30 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Secretary to the Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703)324-5175, TTY 711

Information and forms can also be obtained at: <https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

PERSONAL SERVICE

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
- Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

T. Ayoub 0771
SERVING OFFICER

7-2-18 Stacey A. Kincaid, Sheriff
DATE for _____
Fairfax County, VA

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Served on a Secretary of the Commonwealth.

Not found.

SERVING OFFICER for _____

DATE

PERSONAL SERVICE

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
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Not found.

SERVING OFFICER for _____

DATE



County of Fairfax, Virginia

DCC RETURN COPY

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Construction Code

DATE OF ISSUANCE: July 2, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover AV NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd., NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

You were issued a Corrective Work Order on May 24, 2018 for violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition, effective July 14, 2014. Staff confirmed on July 2, 2018, that the violations itemized below remain.

Explanation: On May 23, 2018, County staff investigated the above referenced premises and discovered that construction, alterations and installations have been performed without the issuance of the required permits, inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

Front Porch-

- The front entrance concrete porch with steps have been reconstructed. New concrete landing and steps installed changing the riser height/tread length geometry of the steps; measurements taken revealed the highest riser approximately nine (9") inches, the lowest riser height seven (7"), more than 3/8" difference in height throughout the flight of steps.
- The landing height to grade exceeds 30", thereby requiring a guard rail. The existing iron guard rail was re-installed. The configuration of the guard rail is inconsistent with the configuration of the new landing and steps. The rail length is too short to reach the dwelling brick wall for

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 2, 2018
SR 149506
Page 2

support. A wood frame has been installed between the house wall and the termination of the railing. The rail height, measured from the tread nosing does not meet the minimum required height of thirty-four (34") inches throughout the flight of stairs.

Rear Addition-

- The addition has been altered by removing windows on both upper and lower levels.
NOTE: Access to perform an investigation of the interior was denied.

The permits required are, but not limited to, the following: Building, Electrical, Mechanical, Plumbing or Demolition.

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

- Apply for and obtain the necessary County permits for the work described herein within 10 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.
- Contact Investigator Al Sanchez to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.
- Contact me at (703)324-9321, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 2, 2018
SR 149506
Page 3

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Al Sanchez by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-9321 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: Per Sect. 119 of the Virginia Construction Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 30 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Secretary to the Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703)324-5175, TTY 711

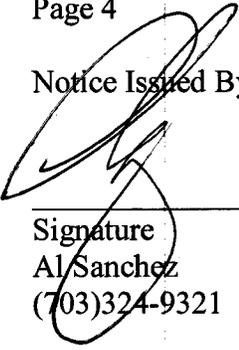
Information and forms can also be obtained at: <https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 2, 2018
SR 149506
Page 4

Notice Issued By:



Signature
Al Sanchez
(703)324-9321

CC: Case File
Guy Tomberlin, Residential Inspections Branch Chief

PERSONAL SERVICE

Being unable to make personal service a copy was delivered in the following manner:

- Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.
- Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

7-2-18 DATE

T. Ayoub 0771
SERVING OFFICER
for Stacey A. Kincaid, Sheriff
Fairfax County, VA

PERSONAL SERVICE

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Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

DATE

SERVING OFFICER
for _____



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Construction Code

DATE OF ISSUANCE: July 24, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover AV NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd., NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

The purpose of this letter is to rescind the Notice of Violation issued to Eagle Properties and Investments LLC, c/o Monika Jain, Registered Agent, dated July 2, 2018, and to reissue a new Notice of Violation regarding the violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition.

You were issued a Corrective Work Order on May 24, 2018 for violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition, effective July 14, 2014. Staff confirmed on July 19, 2018 that the violations remain to include the violations itemized below discovered on the July 19, 2018 inspection.

Explanation: On July 19, 2018, County staff investigated the above referenced premises and discovered that construction, alterations and installations have been performed without the issuance of the required permits, inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code



Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 2

Rear Addition-

A rear two (2) story addition has been constructed; the second level use as a bedroom with the means of egress via an exterior door, the room is without a Smoke Alarm, S/A. Electrical alterations and installations have been performed in this room.

NOTE: Access to the lower level of the structure not available at this time to determine the use of the lower level addition.

Kitchen-

The kitchen has been remodeled to include, but not limited to; a new gas stove replacement, electrical equipment and fixture installations; the counter top serving receptacle placement and spacing is non-code compliant.

Living Room-

New recess light fixture installations performed.

Rear Deck-

An exterior deck, approximately 16' wide, 24' long, 16" high has been constructed at the rear of the dwelling.

The permits required are, but not limited to, the following: Building, Electrical, Mechanical, Plumbing or Demolition.

NOTE: Miscellaneous Building Permit# 181980275, for the front porch repair and window alterations to the rear addition remains open.

Retaining Wall Permit# 041533354, issued 06/01/2004, to build a retaining wall per the Fairfax County Detail remains open without inspections.

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within 10 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Al Sanchez to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 3

- Contact me at (703)324-9321, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- **BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.**

Note:

***When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.**

**Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801**

***When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.**

***If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.**

You are directed to notify Al Sanchez by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-9321 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: Per Sect. 119 of the Virginia Construction Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 30 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 4

Secretary to the Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703)324-5175, TTY 711

Information and forms can also be obtained at: <https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

Notice Issued By:



Signature
Al Sanchez
(703)324-9321

CC: Case File
Guy Tomberlin, Residential Inspections Branch Chief



Building Code Appeal Request

PROJECT INFORMATION

Project Name: N/A
Project Address: 449 Lawyers Rd., NW, Vienna, VA 22180
Permit or case number: 201802768 Tax map number: 0381 06 0097

APPLICANT INFORMATION

Applicant Name: J. Chapman Petersen, Esq. Owner Owner's agent
Address: 3970 Chain Bridge Road
City: Fairfax State: VA ZIP: 22030
Phone: 571-459-2510 Email: jcp@petersenfirm.com

OWNER INFORMATION

See applicant information
Owner Name: Eagle Properties and Investments LLC
Address: 445 Windover Avenue
City: Vienna State: VA ZIP: 22190
Phone: 571-436-3545 Email: amit@eagleinvestmentsllc.com

APPEAL INFORMATION

Appealing decision made on the date of by Building Official Fire Official Property Maintenance Official
rendered on the following date: 07/24/18
Code(s) (IBC, IMC, IPMC, etc.) and year-edition: Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code, 2012 Edition
Section(s): 108.1; 113.3

REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:

On July 17, 2018, after a Building Permit was issued, an inspection was to occur by a county inspector. However, inspector Al Sanchez circumvented Virginia Code § 36-105 and the USBC by entering the Property on July 18, 2018 (along with a fire marshal) without informing the owner and without the owner or the tenant's permission. Neither Virginia law, Federal law or the USBC permits such warrantless searches. Specifically, without an inspection warrant, as required by Virginia Code § 36-105(C)(3) and USBC, Part I, Section 104.1, and without the owner or the tenant's permission, inspector Al Sanchez forced himself into the Property, thereby citing violations of the USBC. The result of Al Sanchez's actions has resulted in the unlawful issuance of the Notice of Violation ("NOV") and a deprivation of the owner's constitutional rights. Further, only minor and ordinary repair work was made to the above-referenced property, as the current owner purchased the property in late 2017. As per the USBC 2012, the current owner made no alterations, as alleged in the NOV that would require Building, Electrical, Mechanical, Plumbing or Demolition permits. All required permits were obtained and no work adversely affected public health or general safety of others.

Please return the completed form and any supporting documentation to the address or email below. A \$208 fee is required at the time of submittal. The application will not be further processed until this fee has been collected.

Chairman, Fairfax County Board of Building Code Appeals
12055 Government Center Parkway, Suite 334
Fairfax, VA 22035-5504
Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov

BBCA appeal_request 2018

RESOLUTION

WHEREAS, the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of enforcement of the USBC Code/ 2012 Edition;

and

WHEREAS, an appeal has been timely filed and brought to the attention of the Board; and
WHEREAS, a hearing has been duly held to consider the aforementioned appeal; and
WHEREAS, the Board has fully deliberated this matter; now, therefore, be it

RESOLVED, that the matter of

Appeal No. #180808.0 AP
In RE: EAGLE PROPERTIES LLC v. FC DEPARTMENT OF CODE COMPLIANCE

The appeal is hereby DENIED for the reasons set out below.

- DECISIONS BASED ON 4TH AMENDMENT RIGHTS VIS-A-VIS ACCESS TO INSPECT ARE OUTSIDE THE SCOPE OF THE BOARD'S RESPONSIBILITY
 - WORK DONE ON THE STRUCTURE PREVIOUSLY PERMITTED (HANDRAIL STAIRS AND WINDOW ENCLOSURE) AND UNPERMITTED WORK
- FURTHER, be it known that: SUBJECT TO THE USBC SHOULD BE INSPECTED AND APPROVED OR PERMITTED AND APPROVED.

1. This decision is solely for this case and its surrounding circumstances;
2. This decision does not serve as a precedent for any future cases or situations, regardless of how similar they may appear;
3. (If appropriate to the motion) No significant adverse conditions to life safety will result from this action; and
4. All of the following conditions be observed.

- a. N/A
- b. _____
- c. _____

Date: 10-10-18

Signature: [Handwritten Signature]
Chairman, Board of Building Code Appeals

Note: Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219 or by calling 804.371.7150.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhdcd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

- Uniform Statewide Building Code
- Statewide Fire Prevention Code
- Industrialized Building Safety Regulations
- Amusement Device Regulations



Appealing Party Information (name, address, telephone number and email address):

Eagle Properties and Investments LLC

445 WINDOVER AVENUE, VIENNA, VA 22180

571-436-3545; amit@eagleinvestmentsllc.com; dalip@eagleinvestmentsllc.com

Opposing Party Information (name, address, telephone number and email address of all other parties):

Fairfax County DCC

12055 Government Center Parkway, Suite 1016, Fairfax, VA 22035

703-324-1300; DCCCodeComplianceE-mail@fairfaxcounty.gov; al.sanchez@fairfaxcounty.gov

Additional Information (to be submitted with this application)

- Copy of enforcement decision being appealed
- Copy of record and decision of local government appeals board (if applicable and available)
- Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of October, 2018 a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: _____

Name of Applicant: J. Chapman Petersen (attorney for Eagle Properties & Investments LLC)
(please print or type)

Carla Guerra-Moran hereby certify that this is
CUSTODIAN
a true copy of a Fairfax County Department of Land Development
Services record of which I am a custodian

Carla Guerra-Moran
CUSTODIAN

Brian Foley hereby certify that this is
SUPERVISOR OF CUSTODIAN
a true copy of a Fairfax County Department of Land Development
Services record of which Carla Guerra-Moran is the
CUSTODIAN
custodian and that Carla Guerra-Moran reports to me
CUSTODIAN

B. Foley
SUPERVISOR OF CUSTODIAN

VIRGINIA:

State Building Code Technical Review Board

_____)	
In RE Eagle Properties)	
& Investments LLC)	
)	
Appellant)	
)	
v.)	Appeal No. 180808.o AP
)	
Fairfax County DCC)	
)	
Appellee)	
_____)	

APPELLANT’S STATEMENT OF SPECIFIC RELIEF SOUGHT

COMES NOW Appellant Eagle Properties and Investments LLC (“Eagle”), by counsel, pursuant to the Uniform State Building Code, 2012 Edition (“USBC”), § 119.8, and Virginia Code 13VAC5-63-190(H) and §36-114, hereby states the following in support of its Statement of Specific Relief Sought:

Statement of Facts

The property subject to this appeal is 449 Lawyers Road, NW, located in the Town of Vienna, Virginia (the “Property”).

On July 17, 2018, after a Building Permit was issued, an inspection was to occur by a county inspector. However, inspector Al Sanchez without informing the owner and without the owner or the tenant’s permission entered the Property. This is the basis for Eagle’s appeal – a violation of its Fourth Amendment rights that resulted in the Notice of Violation and, now, this current appeal.

Jurisdiction

The General Assembly established the Review Board and gave it “the power and duty to hear all appeals from decisions [of the local board of Building Code appeals] arising under application of the Building Code.” Code § 36-114. “Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).” *Id.* “[N]o appeal to the . . . Review Board shall lie prior to a final determination by the local board of Building Code Appeals” (“LBBCA”). Code § 36-105. Here, the LBBCA has issued its resolution and therefore this body has jurisdiction over this appeal.

Standard of Review

On appeal of an agency decision,

the sole determination as to factual issues is whether substantial evidence exists in the agency record to support the agency’s decision. The reviewing court may reject the agency’s findings of fact only if, considering the record as a whole, a reasonable mind necessarily would come to a different conclusion.

Avalon Assisted Living Facilities v. Zager, 39 Va. App. 484, 499-500 (2002)

(quoting *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 242, 369 S.E.2d 1, 7, 4 Va. Law Rep. 2665 (1988)). In making this determination, “the reviewing court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.” *Id.* On review of an agency’s decision, the sole question regarding “factual issues is whether substantial evidence exists in the agency record to support the agency’s decision.” *Strawbridge v. County of Chesterfield*, 23 Va. App. 493, 503 (1996) (quoting *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 242, 369 S.E.2d 1, 7 (1988)).

“On appeal of an agency’s determination on issues of law, the standards differ.”

If the issue falls outside the area generally entrusted to the agency, and is one in which the courts have special competence, i.e., the common law or constitutional law, the court need not defer to the agency's interpretation.

Id. at 243-44, 369 S.E.2d at 8 (quoting *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 914-15 (3d Cir. 1981)) (internal quotations omitted).

However, where the question involves an interpretation which is within the specialized competence of the agency and the agency has been entrusted with wide discretion by the General Assembly, the agency's decision is entitled to special weight in the courts[, and] . . . “judicial interference is permissible only for relief against the arbitrary or capricious action that constitutes a clear abuse of delegated discretion.” *Id.* at 244, 369 S.E.2d at 8 (quoting *Va. Alcoholic Beverage Control Comm'n v. York St. Inn, Inc.*, 220 Va. 310, 315, 257 S.E.2d 851, 855 (1979) (quoting *Schmidt v. Bd. of Adjustment*, 9 N.J. 405, 88 A.2d 607, 615-16 (N.J. 1952)). “No matter how one calibrates judicial deference, the administrative power to interpret a regulation does not include the power to rewrite it.” *Bd. of Supervisors v. State Bldg. Code Tech. Review Bd.*, 52 Va. App. 460, 466 (2008). Courts are required only “to accept only those agency interpretations that are reasonable in light of the principles of construction courts normally employ.” *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 260, 111 S. Ct. 1227, 113 L. Ed. 2d 274 (1991) (Scalia, J., concurring).

“One of the important purposes of the Building Code is to provide for ‘the safety of ultimate construction.’” *Virginia Electric & Power Co. v. Savoy Constr. Co.*, 224 Va. 36, 44 (1982). Another important purpose of the Building Code is to “enhance the safety of those working on the project and, indeed, the safety of the project itself.” *Id.* “The dominant purpose of the Building Code, therefore, is to provide comprehensive protection of the public health and safety.” *Id.*

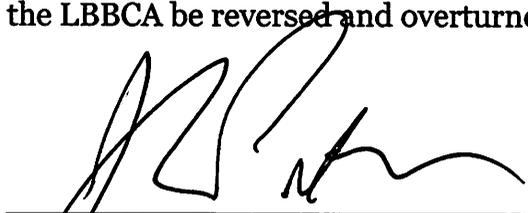
Building code violations are “deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than \$2,500.” Code § 36-106. The statute further provides that “each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense” and that “if the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code.” *Id.* The Building Code must be construed “broadly enough to give substantial effect to this manifest legislative purpose without disregarding its penal effects.” *Id.* (citing 3 *Sutherland Statutory Construction* § 59.05, at 16-17 (4th ed. C. Sands 1974)).

Relief Sought

Neither Virginia law, Federal law or the USBC permits such warrantless searches. Specifically, without an inspection warrant, as required by Virginia Code § 36-105(C)(3) and USBC, Part I, Section 104.1, and without the owner or the tenant’s permission, inspector Al Sanchez (along with a fire marshal) entered the Property. The result of Al Sanchez's actions has resulted in the unlawful issuance of the Notice of Violation (“NOV”) and a deprivation of the owner’s constitutional rights. *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).

Further, only minor and ordinary repair work was made to the above-referenced property, as the current owner purchased the property in late 2017. As per the USBC 2012, the current owner made no alterations, as alleged in the NOV that would require Building, Electrical, Mechanical, Plumbing or Demolition permits. Upon information and belief, all required permits were obtained and no work adversely affected public health or general safety of others.

WHEREFORE Eagle Properties and Investments LLC seeks that the decision of the LBBCA be reversed and overturned for the reasons set forth herein.



**Eagle Properties and Investments LLC
By Counsel**

J. Chapman Petersen, Esq., VSB #37225
David L. Amos, Esq., VSB #87271
CHAP PETERSEN & ASSOCIATES, PLC
8970 Chain Bridge Road
Fairfax, Virginia 22030
(571) 459-2510 (direct dial)
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dla@petersenfirm.com

Documents Submitted
By Eagle Properties and
Investments, LLC through counsel

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J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

August 2, 2018

Via First-Class Mail and E-Mail

Fairfax County Department of Code Compliance
c/o Al Sanchez, Investigating Officer
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Al.Sanchez@fairfaxcounty.gov

**Re: Notice of Violation – 449 Lawyers Rd., NW, Vienna, VA 22180
Case #: 201802768 SR#: 149506**

Dear Mr. Sanchez:

Please be advised that this firm represents Eagle Properties and Investments, LLC (“Eagle Properties”), which owns the property at 449 Lawyers Rd., NW, Vienna, VA 22180 (the “Property”) in the Town of Vienna.

We are in receipt of a Building Permit issued on July 17, 2018 and a Notice of Violation (“NOV”) issued on July 24, 2018 against Eagle Properties citing violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code, 2012 Edition (“USBC”). Please find the Building Permit and the Notice of Violation attached hereto respectively as Exhibit A and B.

On July 17, 2018, after the Building Permit was issued, an inspection was to occur by a county inspector. However, you have circumvented Virginia Code § 36-105 and the USBC by entering the Property on July 18, 2018 (along with a fire marshal) without informing my client and without his or the tenant’s permission. Neither Virginia law, Federal law or the USBC permits such warrantless searches. As a result of your reckless and wanton conduct, you have violated my client’s Fourth Amendment rights against unreasonable and warrantless searches of his property. Specifically, without an inspection warrant, as required by Virginia Code § 36-105(C)(3) and USBC, Part I, Section 104.1, and without my client or the tenant’s permission, you forced yourself into the Property. The result of your actions has resulted in the unlawful issuance of the NOV and a deprivation of my client’s constitutional rights.

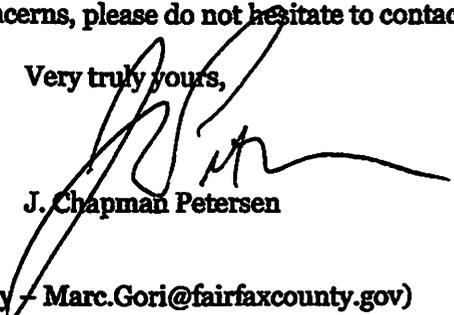
Letter to Al Sanchez
Page 2
August 2, 2018

Please be advised that a cause of action may be brought against a municipality under 42 U.S.C. § 1983 when “the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body’s officers.” *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). A government is liable if “under some official policy, [it] ‘causes’ an employee to violate another’s constitutional rights.” *Id.* at 692. “[I]t is when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.” *Id.* at 694. Your actions have been reckless and in defiance of my client’s constitutional rights. Specifically, you were required to obtain an inspection warrant or my client’s consent prior to entering the Property on July 18, 2018. Rather than obtaining either of the aforesaid, you forced yourself into the Property, in violation of Virginia Code § 36-105(C)(3), USBC, Part I, Section 104.1 and my client’s Fourth Amendment rights. Further, you have harassed and intimidated my client’s tenant at the Property during your unlawful entrance – such conduct is also sanctionable at law.

Please be advised not to take any further action regarding this matter, as I will lodge an appeal to LBBCA on behalf of Eagle Properties regarding the NOV pursuant to Virginia Code 36-105(A) and USBC, Part I, Section 119. Any further action by you will be considered as retaliatory government action, which is prohibited by 42 U.S.C. 1983.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,


J. Chapman Petersen

Cc: Client
Marc E. Gori, Esq. (by email only - Marc.Gori@fairfaxcounty.gov)



J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

August 3, 2018

Via First-Class Mail and E-Mail

Chairman, Fairfax County Board of Building Code Appeals
12055 Government Center Parkway, Suite 334
Fairfax, Virginia 22035-5504
Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov

Re: **Building Code Appeal Request
Case #201802768; SR #149506**

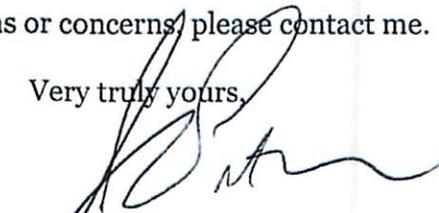
Dear Secretary:

Please be advised that this firm represents Eagle Properties and Investments, LLC ("Eagle Properties"), which owns the property at 449 Lawyers Road, NW, in the Town of Vienna.

I am in receipt of the Notice of Violation issued on July 24, 2018 (the "Order") in the above-referenced case. This letter is to confirm an appeal request of the Order on behalf of Eagle Properties. As required by Part I of the Virginia Uniform Statewide Building Code 2012, Section 119.5., please find enclosed (i) the written request for appeal, (ii) a copy of the building official's decision and (iii) relevant documents thereto. Additionally, please find enclosed a check for \$208.00 as required at the time of submittal.

If you have any further questions or concerns, please contact me.

Very truly yours,



J. Chapman Petersen

Enclosures as stated

Cc: Client

Al Sanchez, Issuing Investigator (by email only – Al.Sanchez@fairfaxcounty.gov)
Marc E. Gori, Esq., Assistant County Attorney (by email only – Marc.Gori@fairfaxcounty.gov)



LAND DEVELOPMENT SERVICES

Fairfax County, Virginia

BUILDING PERMIT

MISCELLANEOUS BUILDING WK RES

Permit Number: 181980275

Issued Date: 07/17/2018

Tax Map ID: 038-1 / 06 / 0097

Job Address: 449 Lawyers Rd NW
Vienna, VA 22180-4175

Plan No. : W-18-4391

Contractor:

OWNER IS CONTRACTOR

Owner/Tenant:

EAGLE PROPERTIES AND INVESTMENTS LLC
445 Windover Ave Nw
Vienna, Va 22180
(571)436-3545

Mechanic's Lien Agent:

Structure: SINGLE FAMILY DWELLING

Code: IRC 2012

Group: R5

Type of Construction: VB

Has permission, according to approved plans, applications and restrictions of record to:

PER CERC CASE 201802768: ALTERATIONS TO REPAIR FRONT CONCRETE STAIRS, PORCH AND INSTALL IRON RAILING PER PLAN. ALTERATIONS TO 2 STORY REAR ADDITION: REMOVE AND FRAME IN WINDOWS (NON STRUCTURAL).

BUILDING OFFICIAL *Brian J. Jolley*

- A copy of this permit must be posted at the construction site for the duration of the permit.
- This permit does not constitute approval from your homeowners' association and its related covenants.
- This permit will expire if work does not commence in six months, or if work is suspended for six months.
- This permit holder is responsible to contact the county when stages of construction are reached that require inspections.
- To schedule inspections call our Inspection office at 703-631-5101, TTY 711 during business hours. Inspection may also be scheduled online at www.fairfaxcounty.gov/fido.
- For questions regarding this permit call the Permit Application Center at 703-222-0801, TTY 711.
- Call Miss Utility before you dig at 811.



INTERIOR ALTERATION



COUNTY OF FAIRFAX, VIRGINIA
 BUILDING PLAN REVIEW DIVISION
 LAND DEVELOPMENT SERVICES, DPWES

Reference Code: 2012 VUSBC
 2012 International Residential Code
 (R-5, VB)

BUILDING PLANNING:

- Landings required at the top and bottom of stairs and egress doors, not less than the width of the stair or door and measured 36" in direction of travel. Exception: top of stairs provided door does not swing over stairs.
- Handrail height shall be 34-38", measured from nosing of the step. Handrails shall be continuous and return to a wall.
- Minimum guardrail height shall be 36". For stair sides, guardrails shall have a minimum height of 34". Guards shall not permit the passage of a 4" diameter sphere.
- Safety glass is required:
 - Within 24" arc from vertical edge of a closed door and less than 60" above the floor
 - In fixed panels more than 9-SF; lowest edge less than 18" above the floor; and top edge higher than 36"
- Around tubs and showers
- Skylights
- Minimum ceiling height is 7' for habitable rooms, kitchens, bathrooms, habitable basements and hallways. Basements without habitable spaces shall be at least 6'8".
- Every dwelling shall have at least one room with at least 120 s.f. Other rooms shall not be less than 70 s.f., except kitchens. Habitable rooms shall not be less than 7' in any horizontal dimension, except kitchens.

FIRE PREVENTION:

- Smoke alarms shall be in each bedroom, outside each separate sleeping area and at each level. They shall be interconnected and hardwired to the electric panel and have a battery backup.
- Carbon monoxide alarms are required for new construction and shall be located outside of sleeping areas when fuel-fired appliances are installed or the dwelling has an attached garage.
- Townhouses shall have a 2-hour party wall between units. No penetrations are allowed in that wall.
- Fire blocking shall be provided:
 - o Vertically at ceiling, floor levels in concealed spaces of stud walls and studded-off spaces at masonry and concrete walls.
 - o Horizontally at intervals not exceeding 10 feet.
 - o At all interconnections between concealed vert. and horiz. spaces, i.e., soffits, drop ceilings, and cove ceilings.
 - o At openings around vents, pipes, ducts, fireplaces, and chimneys at ceiling, floor levels with noncombustible material.
- Emergency Escape windows - A sill height of 44" maximum; a net clear opening of 5.7 SF minimum (5 SF at grade floor; a minimum clear height of 24" and clear width of 20" is required for habitual basement's and each bedroom.
- Window wells for emergency egress windows - minimum clear area 9 SF, minimum horizontal projection and width 36". Ladder or steps required for access out of well when well is deeper than 44". Fall protection shall be provided when depth of well exceeds 48".
- When a window opening is located more than 72" above finished grade, the lowest part of the clear opening shall be a minimum of 18" above the finished floor. Glazing between the floor and 18" shall be fixed or shall not pass a 4" sphere.
- Under stair accessible space shall have walls and soffits protected on the enclosed side with 1/2" gypsum board.

FRAMING CONSTRUCTION:

- Studs may be notched a maximum of 25% of the stud's depth for bearing walls, and 40% for nonbearing walls. The edge of the hole may be no closer than 5/8" to the edge of the stud.
- Notching and cutting of joists shall not exceed 1/6 of depth and shall not be located in the middle third of span. Notch depth at ends shall be a maximum of 25% of members' depth. Holes shall not be bored within 2" of top or bottom of joists; maximum diameter shall be 1/3 of the depth of the member.
- Splices in the top and bottom portion of the double top plate shall be staggered 4' minimum. Top plates may be notched a maximum of 50% of their width, but must be reinforced with 24 gauge steel angle, which spans to adjacent studs.
- Do not cut the top and bottom of manufactured floor joists.
- Floor framing beneath oversized bathtubs shall be doubled or shown to adequately support the additional loading.

MECHANICAL REQUIREMENTS:

- Door access to water heater and/or furnace shall be large enough to remove equipment and not less than 20" wide.
- Unobstructed working space not less than 30" wide.
- Combustion air required for fuel burning appliances - 50 cubic feet per 1,000 Btu/h. 2 permanent openings to adjacent spaces: one located within 12" of ceiling and one 12" from the floor. Each opening shall have free area equal to a minimum of 1 square inch per 1,000 Btu/h input rating of all appliances, but not less than 100 square inches. Combustion air cannot be received from bedrooms, bathrooms or toilet rooms. Unvented gas logs are not permitted in bedrooms.

ELECTRICAL REQUIREMENTS:

- Panel board clearances - 36" depth; 30" width - clear floor space.

- Outlets required within 6' each side of all doors and openings, and 12' thereafter. On any wall 2' long and longer.
- GFCI receptacles required. In bathrooms, counters, garages and unfinished areas.
- Combination type arc fault circuit interrupters are required on all bedroom branch circuits.
- At least one wall-switch-controlled lighting outlet for every habitable room, bathroom, and hallway.
- All stairs shall be provided with an artificial light source of at least 1 foot candle, which will fully illuminate all treads and landings
- Light activation - Controls for interior stairway lighting shall be accessible at the top and bottom of each stair without traversing any step of the stair.

PLUMBING REQUIREMENTS:

- Plumbing fixture clearances;
 - Lavatory - 21" in front
 - Water closet - 15" center to side
 - Water closet - 21" in front
 - Shower minimum size 30" x 30"
 - Shower - 24" in front of opening
- Showers and combination bathtub/shower valves shall be equipped with pressure balance, thermostatic mixing or combination pressure balance/thermo-static mixing valves with high limit stops in accordance with ASSE 1016.

INSPECTION REQUIREMENTS

- Combined inspection for building and trade permits are required.
- County approved plat or grading plan, building plans and HVAC certification must be available on jobsite.

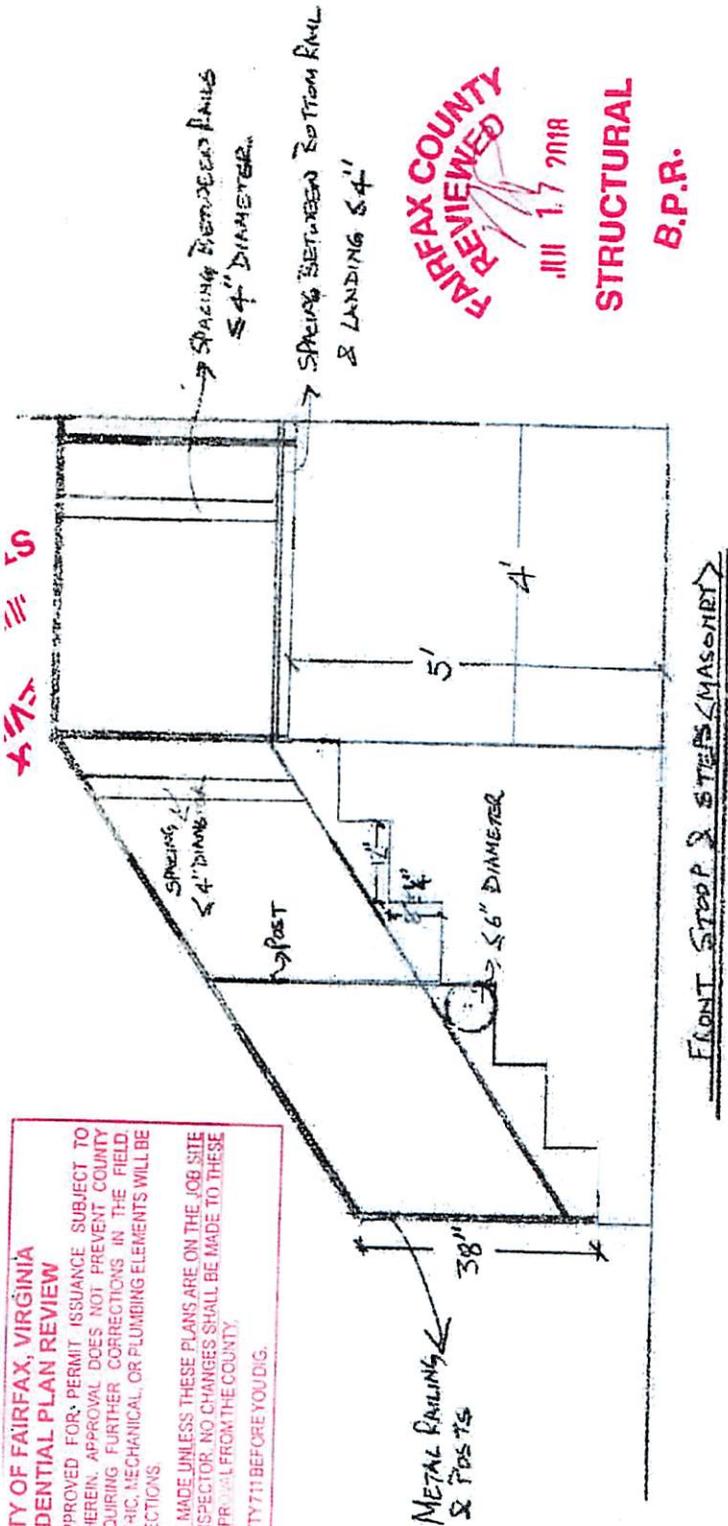
Schedule inspections:
www.fairfaxcounty.gov/fido

**COUNTY OF FAIRFAX, VIRGINIA
RESIDENTIAL PLAN REVIEW**

THESE PLANS ARE APPROVED FOR PERMIT ISSUANCE SUBJECT TO CORRECTIONS NOTED HEREIN. APPROVAL DOES NOT PREVENT COUNTY INSPECTORS FROM REQUIRING FURTHER CORRECTIONS IN THE FIELD. COMPLIANCE WITH ELECTRIC, MECHANICAL, OR PLUMBING ELEMENTS WILL BE EVALUATED DURING INSPECTIONS.

NO INSPECTIONS WILL BE MADE UNLESS THESE PLANS ARE ON THE JOB SITE AND AVAILABLE TO THE INSPECTOR. NO CHANGES SHALL BE MADE TO THESE PLANS WITHOUT PRIOR APPROVAL FROM THE COUNTY.

CALL MISS UTILITY AT 811, TTY 771 BEFORE YOU DIG.



PROJECT 1: REPAIR FRONT MASONRY PORCH & RAILINGS TO FAIRFAX COUNTY TYPICAL SECS & RAIL DETAIL

PROJECT 2: CLOSE TWO WINDOWS IN THE BACK SUNROOM (SUNSHADE SLIDING). NO STRUCTURAL WORK

PROPERTY ADDRESS: 449 LAWYERS RD, VIENNA 22180
 DRAWN BY: AMIT JAIN / EAGLE PROPERTIES & INVESTMENTS
 445 WINDOVER AVE, VIENNA 22180
 SCALE: 1/2" = 1'

201802768
 9321
 AC Sanchez
 Date: 7/17/18

Documents Submitted By Fairfax County

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VIRGINIA:

IN THE STATE TECHNICAL REVIEW BOARD

In RE EAGLE PROPERTIES	:
& INVESTMENTS LLC	:
	:
APPELLANT,	:
	:
v.	: APPEAL NO. 18-19
	:
BRIAN F. FOLEY,	:
BUILDING OFFICIAL FOR	:
FAIRFAX COUNTY, VIRGINIA,	:
	:
APPELLEE.	:

BRIEF IN OPPOSITION TO APPELLANT’S REQUEST TO
REVERSE LOCAL BOARD’S DECISION UPHOLDING NOTICES OF VIOLATION

Brian F. Foley, the Fairfax County Building Official (“Building Official” and Appellee) states the following in opposition to Eagle Properties and Investments LLC (“Eagle”) appeal, which requests reversal of the decision by the Fairfax County Local Board of Building Code Appeals (“LBBCA”) that upheld Notices of Violation issued by Al Sanchez (“Sanchez”), technical assistant to the Building Official. The record reviewed by the LBBCA, which includes submissions from Eagle and the Building Official, is attached hereto as Exhibit 1 and is cited herein as the “LBBCA Record”.

BACKGROUND

On July 24, 2018, Sanchez issued a Notice of Violation of the Building Code (the “Notice of Violation”) to Eagle for failing to obtain building permits for construction and alterations to a single-family dwelling located at 449 Lawyers Road, NW, Vienna, Virginia (the “Property”), in violation of Part I of Uniform Statewide Building Code (“VCC”) § 108.1, and for failing to get minimum required inspections in violation of VCC § 113.3. The Notice of

Violation alleges that the work conducted without building permits includes modifications to a rear addition (removal of windows and closing the openings), a remodeled kitchen (gas stove, plumbing fixtures, electrical installations), recessed lighting, and a rear deck. LBBCA Record, p. 13-16. However, the full extent of the modifications to the dwelling are unknown because Sanchez was not granted access to all the rooms. Sanchez's allegations are based on his review of aerial images and the exterior and interior inspections. The aerial images, which were provided to Local Board of Building Code Appeals ("LBBCA") during its hearing, and the inspection photographs are attached as LBBCA Record, p. 24-31, 33-40, and 57-62.

By letter dated August 3, 2018, and by filing of a Building Code Appeal Request, Eagle appealed the Notice of Violation to LBBCA. LBBCA Record, p. 1-2. Then on October 10, 2018, the LBBCA denied the appeal, upholding the validity of the Notice of Violation. Eagle filed this appeal to the State Technical Review Board ("TRB"). Eagle's appeal to the TRB is attached as Exhibit 2 and is cited herein as the "Appeal".

One issue raised by Eagle in its Appeal is the lawfulness of the inspection on July 18, 2018. On that date, Sanchez and Fairfax County Department of Code Compliance Investigator Charles D. Forshee ("Forshee") met a John Gupta ("Gupta") at the Property, who was in the front yard when they arrived. Gupta was familiar with Sanchez because he and Amit Jain had previously met with Sanchez to discuss compliance the building code violations on the Property.

After completing the exterior inspection, upon Sanchez's request, Gupta escorted the investigators through the front entrance and into the residence to conduct an interior inspection. The inspection of the interior of the rear addition on the main level revealed a bedroom¹, which

¹ There is a building permit from 1993 for two decks with a gazebo. There are no permits for an enclosed rear addition, which are being occupied.

Gupta said he uses to take occasional naps. Gupta prohibited the investigators from inspecting the basement, which Gupta admitted includes a bedroom created as part of the rear addition and is occupied by his sister. After completing the inspection, Sanchez and Forshee informed Gupta that the occupancy of basement bedroom raises potential life-safety concerns that they would like to investigate. Then they left the premises. At no time during the investigation did the discussions between Gupta and the investigators become contentious.

Eagle is the bona-fide purchaser of the Property. In addition to its challenge based on the alleged illegality of the inspection, it claims that the majority of the alterations to the structure on the Property, which are the subject of the Notices of Violation, were completed by its predecessor, and that Eagle only made minor alterations that do not require building permits.

ARGUMENT

The Appeal should be denied for three reasons: (1) The inspection was lawful; (2) Eagle is a party properly subject to enforcement under Va. Code § 36-106 (2014) for the violations alleged in the Notice of Violation; and (3) the intent of the VCC would be frustrated if Eagle (or any similarly situated owner) were not legally responsible for violations of the VCC that convey with the property.

1. A voluntarily authorized inspection is a lawful inspection

The inspection of the Property by Sanchez and Forshee was lawful, because Gupta voluntarily consented to it. Gupta escorted the County investigators around the Property and then into and through the dwelling. Also, the investigators limited the scope of their inspection at Gupta's request. Notwithstanding these facts, Eagle asserted in its appeal to the LBBCA, without providing a single factual allegation, that Sanchez "forced" himself into the Property.

LBBCA Record, p. 2. Eagle, in this appeal, now claims that Sanchez and a “fire marshal” (Forshee) “entered” without the owner’s or tenant’s permission. Appeal, p. 7.

Voluntary consent to an interior inspection of a home is an exception to the prohibition against warrantless searches. *Glenn v. Com.*, 654 S.E.2d 910, 912 (Va. 2008). No inspection warrant or search warrant is necessary where voluntary consent has been granted by a person with actual or apparent authority over the premises. *See Id.* at 913-15. A person has actual authority to consent to a search if he has (1) mutual use of the property by virtue of joint access, or (2) control for most purposes. *Id.* at 914. Apparent authority exists when “an officer reasonably, even if erroneously, believes the third party possesses authority to consent.” *Id.* Also, a search conducted with the consent of an individual with “common authority over a property is valid as against the absent, non-consenting person with who the authority [over the property] is shared.” *Black v. Com.*, 288 S.E.2d 449, 452 (Va. 1982) (citing *United States v. Matlock*, 415 U.S. 164, 170 (1974)).

Eagle is a limited liability corporation, the management of which is vested in its members, an individual or individuals who are delegated management authority, or to whom authority is granted under the articles of organization. Va. Code § 13.1-1022 (2006). In other words, one or more individuals could possess actual legal authority to authorize an inspection on behalf of Eagle, including Gupta. Regardless of Gupta’s affiliation with Eagle, Sanchez is not obligated to affirmatively confirm whether Gupta had actual authority to authorize the inspection when the facts support the conclusion that it was reasonable for Sanchez to conclude that Gupta had the authority to consent to the inspection. *See Glen*, 654 S.E.2d at 915 (noting that that it was reasonable for the police to search a backpack even though they did not know that the backpack did not belong to the person who consented to its search).

Gupta had previously met with Sanchez to discuss compliance issues, had access to the interior of the dwelling, admitted that he sometimes naps in the home, and limited the scope of the inspection. These facts are all indicia that Gupta had authority to grant Sanchez permission to conduct the inspection.

2. Eagle is Violation of the VCC

Eagle erroneously contends that it is not liable for alterations to the dwelling that were made by its predecessor. Appeal, p. 7. It is a violation to perform construction without a required building permit. That violation continues until a permit is obtained, regardless of who performed the construction or the owner at the time of unpermitted construction. Such an interpretation is supported by the building official's ability to enforce the VCC within one year after discovery of a violation, provided that discovery occurs within two years after a final inspection is performed.

A building permit must be obtained for certain construction-related work before construction can begin. VCC § 108.1. That work includes, among other things, the removal or addition of any wall, any structural component, and electrical wiring. *Id.* If work requiring a permit commences without one, it is unpermitted work—a violation of the VCC. Any work performed in the absence of a building permit must be presumed to be noncompliant until inspections confirm otherwise. Without taking the initial step of obtaining a permit, no assurances can be made that the work is designed and constructed in compliance with the VCC, preventing a building official from performing any of his regulatory oversight.

Va. Code § 36-106 provides that “[i]t shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any [VCC] provisions to violate any such provisions.” *See also* VCC § 115.1. VCC § 115.2 states that “the building official shall

issue a written notice of violation to the responsible party if any violations of this code or any directives or orders of the building official have not been corrected or complied with in a reasonable time.” In addition to obtaining a building permit before the beginning construction activities, interim and final inspections must be performed. VCC §§ 113.3 and 113.8. Failing to obtain a permit or perform inspections, therefore, is a violation of the VCC.

The Building Official retained authority to enforce the VCC regardless of when the violation occurred. The statute of limitations for enforcement of the VCC are set forth in Va. Code § 19.2-8 (2008). Va. Code § 36-106(F). Prosecution of VCC offenses must commence

within one year of discovery of the offense by the building official; provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or issuance of a certificate of use and occupancy for the building or structure, *whichever is later*.

Va. Code § 19.2-8 (emphasis added). For additions or alterations to existing buildings, the final inspection serves as the new certificate of occupancy. VCC § 113.8. So, if there is no final inspection of alterations to an existing home (the new certificate of occupancy), the “later” event cannot occur. Therefore, a building official can enforce permitting and inspection requirements at any time, provided that it commences within two years after the discovery date. Here, the violation was discovered on July 18, 2018, and the Notice of Violation was issued to Eagle.

Eagle is the party responsible for curing the violations because it is the Property owner and is currently violating the VCC by maintaining the structure in its unpermitted state. If an owner were not always a proper party, the Building Official would be prevented from confirming that a structure was constructed to applicable standards, and, perhaps relegate it in an unsafe condition. Also, no remedy would be available under these circumstances, because no other

party would have the authority to obtain the required permits, enter upon the Property or into the dwelling to perform work, or request inspections, and no court could grant such a remedy.

The Notice of Violation allege that Eagle failed to get required building permits and perform interim inspections. Those violations exist today, just as they existed on the day Eagle acquired the Property. The violations, therefore, are continuing, a possibility foreseen by the General Assembly, which, as noted above, tied a building official's enforcement authority to the date a violation is discovered. The failure to get a permit is an ongoing violation, subject to enforcement once it is discovered, and the owner of such property is legally responsible for curing any violations.

Inheriting the liability associated with a purchased property is consistent with the legal doctrine of *caveat emptor*, under which a purchaser has the burden of finding defects in a property and assumes the accompanying liability once ownership is transferred. *Norris v. Mitchell*, 495 S.E.2d 809, 812-13, (Va. 1998) (citation omitted). This doctrine saddles the new owner with any defects acquired at the time of transfer by immunizing the seller from liability arising from a condition that went undetected by the buyer, unless the seller conceals the defective condition or deliberately withholds material facts affecting the value of the property. *Id.* Here, as a matter of law, when Eagle purchased the Property it also acquired the unpermitted work and the liability associated with that condition. Eagle cannot now claim that because it purchased the property, it is not responsible for its defects.

3. Denying the appeal will uphold the purpose of the VCC

Eagle's appeal should be denied; otherwise, the purpose of the VCC would be frustrated. The purpose of the VCC "is to protect the health, safety and welfare of the residents of . . . Virginia. VCC § 102.1. "It is the duty of any person performing work covered by the [the VCC]

to comply with all applicable provision of this code and to perform and complete such work so as to secure the results intended by the [VCC].” VCC § 112.1. There is simply no way to ensure that construction adheres to the requirements of the VCC unless homeowners and contractors obtain building permits and perform the requisite inspections. Unpermitted work is necessarily difficult to discover, but its prevention is vital to ensuring the public’s safety. Without the permitting and inspection process, no assurance exists that design and implementation conform to the requirements of the code. If Eagle, as owner of the Property, is immune to an enforcement action in this case, the Building Official’s authority to conduct inspections of unpermitted work would be obstructed, and Eagle, along with any other similarly situated owner, could perpetuate a potential dangerous condition, and thus prevent building officials from furthering the purpose of the code.

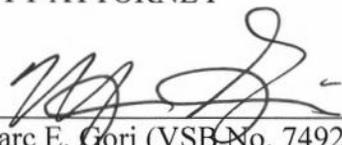
CONCLUSION

Eagle’s appeal should be denied because (1) the inspection was lawful; (2) Eagle is a party properly subject to enforcement under Va. Code § 36-106 (2014) for the violations alleged in the Notices of Violation; and (3) the intent of the VCC would be frustrated if Eagle (or any similarly situated owner) were not legally responsible for violations of the VCC that convey with the property.

WHEREFORE, the Building Official, by counsel, respectfully requests that the TRB deny the Appeal and uphold the decision of the LBBCA.

ELIZABETH D. TEARE
COUNTY ATTORNEY

By



Marc E. Gori (VSB No. 74926)

Assistant County Attorney

12000 Government Center Parkway, Suite 549

Fairfax, Virginia 22035-0064

(703) 324-2421 (tel.); (703) 324-2665 (fax)

marc.gori@fairfaxcounty.gov

Counsel for the Appellee



J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

August 3, 2018

180808.OAP
AUG - 8 2018

Via First-Class Mail and E-Mail

Chairman, Fairfax County Board of Building Code Appeals
12055 Government Center Parkway, Suite 334
Fairfax, Virginia 22035-5504
Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov

Re: **Building Code Appeal Request
Case #201802768; SR #149506**

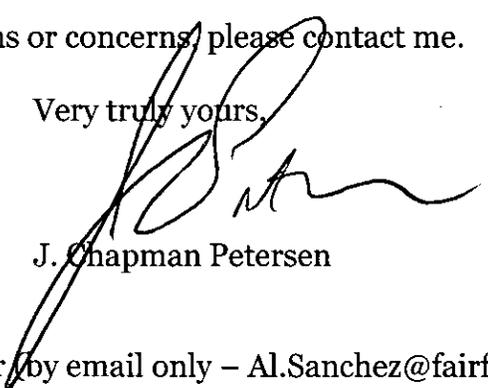
Dear Secretary:

Please be advised that this firm represents Eagle Properties and Investments, LLC ("Eagle Properties"), which owns the property at 449 Lawyers Road, NW, in the Town of Vienna.

I am in receipt of the Notice of Violation issued on July 24, 2018 (the "Order") in the above-referenced case. This letter is to confirm an appeal request of the Order on behalf of Eagle Properties. As required by Part I of the Virginia Uniform Statewide Building Code 2012, Section 119.5., please find enclosed (i) the written request for appeal, (ii) a copy of the building official's decision and (iii) relevant documents thereto. Additionally, please find enclosed a check for \$208.00 as required at the time of submittal.

If you have any further questions or concerns, please contact me.

Very truly yours,


J. Chapman Petersen

Enclosures as stated

Cc: Client

Al Sanchez, Issuing Investigator (by email only - Al.Sanchez@fairfaxcounty.gov)

Marc E. Gori, Esq., Assistant County Attorney (by email only -

Marc.Gori@fairfaxcounty.gov)



Building Code Appeal Request

PROJECT INFORMATION

Project Name: N/A
 Project Address: 449 Lawyers Rd., NW, Vienna, VA 22180
 Permit or case number: 201802768 Tax map number: 0381 06 0097

APPLICANT INFORMATION

Applicant Name: J. Chapman Petersen, Esq. Owner Owner's agent
 Address: 3970 Chain Bridge Road
 City: Fairfax State: VA ZIP: 22030
 Phone: 571-459-2510 Email: jcp@petersenfirm.com

OWNER INFORMATION

See applicant information
 Owner Name: Eagle Properties and Investments LLC
 Address: 445 Windover Avenue
 City: Vienna State: VA ZIP: 22190
 Phone: 571-436-3545 Email: amit@eagleinvestmentsllc.com

APPEAL INFORMATION

Appealing decision made on the date of by Building Official Fire Official Property Maintenance Official
 rendered on the following date: 07/24/18
 Code(s) (IBC, IMC, IPMC, etc.) and year-edition: Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code, 2012 Edition
 Section(s): 108.1; 113.3

REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:

On July 17, 2018, after a Building Permit was issued, an inspection was to occur by a county inspector. However, inspector Al Sanchez circumvented Virginia Code § 36-105 and the USBC by entering the Property on July 18, 2018 (along with a fire marshal) without informing the owner and without the owner or the tenant's permission. Neither Virginia law, Federal law or the USBC permits such warrantless searches. Specifically, without an inspection warrant, as required by Virginia Code § 36-105(C)(3) and USBC, Part I, Section 104.1, and without the owner or the tenant's permission, inspector Al Sanchez forced himself into the Property, thereby citing violations of the USBC. The result of Al Sanchez's actions has resulted in the unlawful issuance of the Notice of Violation ("NOV") and a deprivation of the owner's constitutional rights. Further, only minor and ordinary repair work was made to the above-referenced property, as the current owner purchased the property in late 2017. As per the USBC 2012, the current owner made no alterations, as alleged in the NOV that would require Building, Electrical, Mechanical, Plumbing or Demolition permits. All required permits were obtained and no work adversely affected public health or general safety of others.

Please return the completed form and any supporting documentation to the address or email below. A \$208 fee is required at the time of submittal. The application will not be further processed until this fee has been collected.

Chairman, Fairfax County Board of Building Code Appeals
 12055 Government Center Parkway, Suite 334
 Fairfax, VA 22035-5504
 Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov

BBCA appeal_request 2018



LAND DEVELOPMENT
SERVICES

Fairfax County, Virginia

BUILDING PERMIT

MISCELLANEOUS BUILDING WK RES

Permit Number: 181980275

Issued Date: 07/17/2018

Tax Map ID: 038-1 / 06 / 10097

Job Address: 449 Lawyers Rd NW
Vienna, VA 22180-4175

Plan No.: W-18-4391

Owner/Tenant:

Contractor:

OWNER IS CONTRACTOR

EAGLE PROPERTIES AND INVESTMENTS LLC
445 Windover Ave Nw
Vienna, Va 22180
(571)436-3545

Mechanic's Lien Agent:

Structure: SINGLE FAMILY DWELLING

Code: IRC 2012

Group: R5

Type of Construction: VB

Has permission, according to approved plans, applications and restrictions of record to:

PER CERC CASE 201802768: ALTERATIONS TO REPAIR FRONT CONCRETE STAIRS, PORCH AND
INSTALL IRON RAILING PER PLAN. ALTERATIONS TO 2 STORY REAR ADDITION: REMOVE AND FRAME
IN WINDOWS (NON STRUCTURAL).

BUILDING OFFICIAL *Brian J. Jolley*

- A copy of this permit must be posted at the construction site for the duration of the permit.
- This permit does not constitute approval from your homeowners' association and its related covenants.
- This permit will expire if work does not commence in six months, or if work is suspended for six months.
- This permit holder is responsible to contact the county when stages of construction are reached that require inspections.
- To schedule inspections call our Inspection office at 703-631-5101, TTY 711 during business hours. Inspection may also be scheduled online at www.fairfaxcounty.gov/fido.
- For questions regarding this permit call the Permit Application Center at 703-222-0801, TTY 711.
- Call Miss Utility before you dig at 811.

INTERIOR ALTERATION



**COUNTY OF FAIRFAX, VIRGINIA
BUILDING PLAN REVIEW DIVISION
LAND DEVELOPMENT SERVICES, DPWES**

Reference Code: 2012 VUSBC
2012 International Residential Code
(R-5, VB)

BUILDING PLANNING:

- Landings required at the top and bottom of stairs and egress doors, not less than the width of the stair or door and measured 36" in direction of travel. Exception: top of stairs provided door does not swing over stairs.
- Handrail height shall be 34-38", measured from nosing of the step. Handrails shall be continuous and return to a wall.
- Minimum guardrail height shall be 36". For stair sides, guardrails shall have a minimum height of 34". Guards shall not permit the passage of a 4" diameter sphere.
- Safety glass is required:
 - Within 24" arc from vertical edge of a closed door and less than 60" above the floor
 - In fixed panels more than 9-SF; lowest edge less than 18" above the floor; and top edge higher than 36"
 - Around tubs and showers
 - Skylights
- Minimum ceiling height is 7' for habitable rooms, kitchens, bathrooms, habitable basements and hallways. Basements without habitable spaces shall be at least 6'8".
- Every dwelling shall have at least one room with at least 120 s.f. Other rooms shall not be less than 70 s.f., except kitchens. Habitable rooms shall not be less than 7' in any horizontal dimension, except kitchens.

FIRE PREVENTION:

- Smoke alarms shall be in each bedroom, outside each separate sleeping area and at each level. They shall be interconnected and hardwired to the electric panel and have a battery backup.
- Carbon monoxide alarms are required for new construction and shall be located outside of sleeping areas when fuel-fired appliances are installed or the dwelling has an attached garage.
- Townhouses shall have a 2-hour party wall between units. No penetrations are allowed in that wall.
- Fire blocking shall be provided:
 - o Vertically at ceiling, floor levels in concealed spaces of stud walls and studded-off spaces at masonry and concrete walls.
 - o Horizontally at intervals not exceeding 10 feet.
 - o At all interconnections between concealed vert. and horiz. spaces, i.e., soffits, drop ceilings, and cove ceilings.
 - o At openings around vents, pipes, ducts, fireplaces, and chimneys at ceiling, floor levels with noncombustible material.
- Emergency Escape windows - A sill height of 44" maximum; a net clear opening of 5.7 SF minimum (5 SF at grade floor; a minimum clear height of 24" and clear width of 20" is required for habitual basement's and each bedroom.
- Window wells for emergency egress windows - minimum clear area 9 SF, minimum horizontal projection and width 36". Ladder or steps required for access out of well when well is deeper than 44". Fall protection shall be provided when depth of well exceeds 48".
- When a window opening is located more than 72" above finished grade, the lowest part of the clear opening shall be a minimum of 18" above the finished floor. Glazing between the floor and 18" shall be fixed or shall not pass a 4" sphere.
- Under stair accessible space shall have walls and soffits protected on the enclosed side with 1/2" gypsum board.

FRAMING CONSTRUCTION:

- Studs may be notched a maximum of 25% of the stud's depth for bearing walls, and 40% for nonbearing walls. The edge of the hole may be no closer than 5/8" to the edge of the stud.
- Notching and cutting of joists shall not be exceeded 1/6 of depth and shall not be located in the middle third of span. Notch depth at ends shall be a maximum of 25% of members' depth. Holes shall not be bored within 2" of top or bottom of joists; maximum diameter shall be 1/3 of the depth of the member.
- Splices in the top and bottom portion of the double top plate shall be staggered 4' minimum. Top plates may be notched a maximum of 50% of their width, but must be reinforced with 24 gauge steel angle, which spans to adjacent studs.
- Do not cut the top and bottom of manufactured floor joists.
- Floor framing beneath oversized bathtubs shall be doubled or shown to adequately support the additional loading.

MECHANICAL REQUIREMENTS:

- Door access to water heater and/or furnace shall be large enough to remove equipment and not less than 20" wide.
- Unobstructed working space not less than 30" wide.
- Combustion air required for fuel burning appliances - 50 cubic feet per 1,000 Btu/h. 2 permanent openings to adjacent spaces: one located within 12" of ceiling and one 12" from the floor. Each opening shall have free area equal to a minimum of 1 square inch per 1,000 Btu/h input rating of all appliances, but not less than 100 square inches. Combustion air cannot be received from bedrooms, bathrooms or toilet rooms. Unvented gas logs are not permitted in bedrooms.

ELECTRICAL REQUIREMENTS:

- Panel board clearances - 36" depth; 30" width - clear floor space.

- Outlets required within 6' each side of all doors and openings, and 12' thereafter. On any wall 2' long and longer.
- GFCI receptacles required. In bathrooms, countertop surfaces for wet bars, all kitchen counters, garages and unfinished areas.
- Combination type arc fault circuit interrupters are required on all bedroom branch circuits.
- At least one wall-switch-controlled lighting outlet for every habitable room, bathroom, and hallway.
- All stairs shall be provided with an artificial light source of at least 1 foot candle, which will fully illuminate all treads and landings
- Light activation - Controls for interior stairway lighting shall be accessible at the top and bottom of each stair without traversing any step of the stair.

PLUMBING REQUIREMENTS:

- Plumbing fixture clearances;
 - Lavatory - 21" in front
 - Water closet - 15" center to side
 - Water closet - 21" in front
 - Shower minimum size 30" x 30"
 - Shower - 24" in front of opening
- Showers and combination bathtub/ shower valves shall be equipped with pressure balance, thermostatic mixing or combination pressure balance/ thermo-static mixing valves with high limit stops in accordance with ASSE 1016.

INSPECTION REQUIREMENTS:

- Combined inspection for building and trade permits are required.
- County approved plat or grading plan, building plans and HVAC certification must be available on jobsite.
 - Schedule inspections: www.fairfaxcounty.gov/fido



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Construction Code

DATE OF ISSUANCE: July 24, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover AV NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd., NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

The purpose of this letter is to rescind the Notice of Violation issued to Eagle Properties and Investments LLC, c/o Monika Jain, Registered Agent, dated July 2, 2018, and to reissue a new Notice of Violation regarding the violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition.

You were issued a Corrective Work Order on May 24, 2018 for violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition, effective July 14, 2014. Staff confirmed on July 19, 2018 that the violations remain to include the violations itemized below discovered on the July 19, 2018 inspection.

Explanation: On July 19, 2018, County staff investigated the above referenced premises and discovered that construction, alterations and installations have been performed without the issuance of the required permits, inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 2

Rear Addition-

A rear two (2) story addition has been constructed; the second level use as a bedroom with the means of egress via an exterior door, the room is without a Smoke Alarm, S/A. Electrical alterations and installations have been performed in this room.

NOTE: Access to the lower level of the structure not available at this time to determine the use of the lower level addition.

Kitchen-

The kitchen has been remodeled to include, but not limited to; a new gas stove replacement, electrical equipment and fixture installations; the counter top serving receptacle placement and spacing is non-code compliant.

Living Room-

New recess light fixture installations performed.

Rear Deck-

An exterior deck, approximately 16' wide, 24' long, 16" high has been constructed at the rear of the dwelling.

The permits required are, but not limited to, the following: Building, Electrical, Mechanical, Plumbing or Demolition.

NOTE: Miscellaneous Building Permit# 181980275, for the front porch repair and window alterations to the rear addition remains open.

Retaining Wall Permit# 041533354, issued 06/01/2004, to build a retaining wall per the Fairfax County Detail remains open without inspections.

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

- Apply for and obtain the necessary County permits for the work described herein within 10 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.
- Contact Investigator Al Sanchez to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 3

- Contact me at (703)324-9321, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- **BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.**

Note:

***When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.**

Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801

***When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.**

***If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.**

You are directed to notify Al Sanchez by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-9321 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: Per Sect. 119 of the Virginia Construction Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 30 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 4

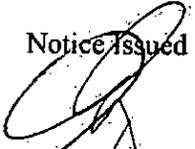
Secretary to the Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703)324-5175, TTY 711

Information and forms can also be obtained at: <https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

Notice Issued By:



Signature
Al Sanchez
(703)324-9321

CC: Case File
Guy Tomberlin, Residential Inspections Branch Chief



**CHAP PETERSEN
& ASSOCIATES, PLC**

J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

August 2, 2018

Via First-Class Mail and E-Mail

Fairfax County Department of Code Compliance
c/o Al Sanchez, Investigating Officer
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Al.Sanchez@fairfaxcounty.gov

**Re: Notice of Violation – 449 Lawyers Rd., NW, Vienna, VA 22180
Case #: 201802768 SR#: 149506**

Dear Mr. Sanchez:

Please be advised that this firm represents Eagle Properties and Investments, LLC (“Eagle Properties”), which owns the property at 449 Lawyers Rd., NW, Vienna, VA 22180 (the “Property”) in the Town of Vienna.

We are in receipt of a Building Permit issued on July 17, 2018 and a Notice of Violation (“NOV”) issued on July 24, 2018 against Eagle Properties citing violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code, 2012 Edition (“USBC”). Please find the Building Permit and the Notice of Violation attached hereto respectively as Exhibit A and B.

On July 17, 2018, after the Building Permit was issued, an inspection was to occur by a county inspector. However, you have circumvented Virginia Code § 36-105 and the USBC by entering the Property on July 18, 2018 (along with a fire marshal) without informing my client and without his or the tenant’s permission. Neither Virginia law, Federal law or the USBC permits such warrantless searches. As a result of your reckless and wanton conduct, you have violated my client’s Fourth Amendment rights against unreasonable and warrantless searches of his property. Specifically, without an inspection warrant, as required by Virginia Code § 36-105(C)(3) and USBC, Part I, Section 104.1, and without my client or the tenant’s permission, you forced yourself into the Property. The result of your actions has resulted in the unlawful issuance of the NOV and a deprivation of my client’s constitutional rights.

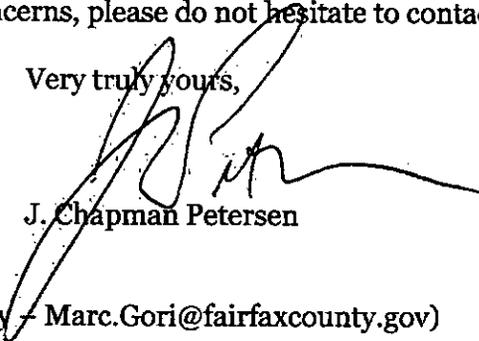
Letter to Al Sanchez
Page 2
August 2, 2018

Please be advised that a cause of action may be brought against a municipality under 42 U.S.C. § 1983 when “the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body’s officers.” *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). A government is liable if “under some official policy, [it] ‘causes’ an employee to violate another’s constitutional rights.” *Id.* at 692. “[I]t is when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.” *Id.* at 694. Your actions have been reckless and in defiance of my client’s constitutional rights. Specifically, you were required to obtain an inspection warrant or my client’s consent prior to entering the Property on July 18, 2018. Rather than obtaining either of the aforesaid, you forced yourself into the Property, in violation of Virginia Code § 36-105(C)(3), USBC, Part I, Section 104.1 and my client’s Fourth Amendment rights. Further, you have harassed and intimidated my client’s tenant at the Property during your unlawful entrance – such conduct is also sanctionable at law.

Please be advised not to take any further action regarding this matter, as I will lodge an appeal to LBBCA on behalf of Eagle Properties regarding the NOV pursuant to Virginia Code 36-105(A) and USBC, Part I, Section 119. Any further action by you will be considered as retaliatory government action, which is prohibited by 42 U.S.C. 1983.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



J. Chapman Petersen

Cc: Client
Marc E. Gori, Esq. (by email only - Marc.Gori@fairfaxcounty.gov)



Fairfax County, Virginia

BUILDING PERMIT

MISCELLANEOUS BUILDING WK RES

Permit Number: 181980275

Issued Date: 07/17/2018

Tax Map ID: 038-1 / 06 / 10097

Job Address: 449 Lawyers Rd NW
Vienna, VA 22180-4175

Plan No.: W-18-4391

Owner/Tenant:

Contractor:

OWNER IS CONTRACTOR

EAGLE PROPERTIES AND INVESTMENTS LLC
445 Windover Ave Nw
Vienna, Va 22180
(571)436-3545

Mechanic's Lien Agent:

Structure: SINGLE FAMILY DWELLING

Code: IRC 2012

Group: R5

Type of Construction: VB

Has permission, according to approved plans, applications and restrictions of record to:

PER CERC CASE 201802768: ALTERATIONS TO REPAIR FRONT CONCRETE STAIRS, PORCH AND INSTALL IRON RAILING PER PLAN. ALTERATIONS TO 2 STORY REAR ADDITION: REMOVE AND FRAME IN WINDOWS (NON STRUCTURAL).

BUILDING OFFICIAL *Brian J. Foley*

- A copy of this permit must be posted at the construction site for the duration of the permit.
- This permit does not constitute approval from your homeowners' association and its related covenants.
- This permit will expire if work does not commence in six months, or if work is suspended for six months.
- This permit holder is responsible to contact the county when stages of construction are reached that require inspections.
- To schedule inspections call our Inspection office at 703-631-5101, TTY 711 during business hours. Inspection may also be scheduled online at www.fairfaxcounty.gov/fido.
- For questions regarding this permit call the Permit Application Center at 703-222-0801, TTY 711.
- Call Miss Utility before you dig at 811.





County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Construction Code

DATE OF ISSUANCE: July 24, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover AV NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd., NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

The purpose of this letter is to rescind the Notice of Violation issued to Eagle Properties and Investments LLC, c/o Monika Jain, Registered Agent, dated July 2, 2018, and to reissue a new Notice of Violation regarding the violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition.

You were issued a Corrective Work Order on May 24, 2018 for violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition, effective July 14, 2014. Staff confirmed on July 19, 2018 that the violations remain to include the violations itemized below discovered on the July 19, 2018 inspection.

Explanation: On July 19, 2018, County staff investigated the above referenced premises and discovered that construction, alterations and installations have been performed without the issuance of the required permits, inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code



Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 2

Rear Addition-

A rear two (2) story addition has been constructed; the second level use as a bedroom with the means of egress via an exterior door, the room is without a Smoke Alarm, S/A. Electrical alterations and installations have been performed in this room.

NOTE: Access to the lower level of the structure not available at this time to determine the use of the lower level addition.

Kitchen-

The kitchen has been remodeled to include, but not limited to; a new gas stove replacement, electrical equipment and fixture installations; the counter top serving receptacle placement and spacing is non-code compliant.

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New recess light fixture installations performed.

Rear Deck-

An exterior deck, approximately 16' wide, 24' long, 16" high has been constructed at the rear of the dwelling.

The permits required are, but not limited to, the following: Building, Electrical, Mechanical, Plumbing or Demolition.

NOTE: Miscellaneous Building Permit# 181980275, for the front porch repair and window alterations to the rear addition remains open.

Retaining Wall Permit# 041533354, issued 06/01/2004, to build a retaining wall per the Fairfax County Detail remains open without inspections.

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within 10 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Al Sanchez to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 3

- Contact me at (703)324-9321, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- **BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.**

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Al Sanchez by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-9321 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: Per Sect. 119 of the Virginia Construction Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 30 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 4

Secretary to the Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703)324-5175, TTY 711

Information and forms can also be obtained at: <https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

Notice Issued By:



Signature
Al Sanchez
(703)324-9321

CC: Case File
Guy Tomberlin, Residential Inspections Branch Chief



County of Fairfax, Virginia

MEMORANDUM

STAFF MEMORANDUM TO THE LOCAL BOARD OF BUILDING AND FIRE CODE APPEALS

HEARING DATE: October 10, 2018

APPELLANT: Eagle Properties And Investments LLC

SUBJECT PROPERTY: 449 Lawyers Road NW
Vienna, VA 22180

CODE: 2012 Virginia Construction Code

INVESTIGATOR: Al Sanchez
Department of Code Compliance

DCC CASE #: #: 201802768 **SR#:** 149506

180808.OAP
449 Lawyers Road NW
Eagle Properties and Investments LLC

Staff respectfully recommends that the Fairfax County Board of Building and Fire Code Appeals (Board) uphold the determination in the Notice of Violation that the referenced property is in violation of the Virginia Construction Code.

Staff Position

In response to a complaint, inspections of the referenced property were conducted. During the inspections, the Department of Code Compliance Investigator observed the following violations of the Virginia Construction Code, and issued a Notice of Violation:

- Section 108.1 When applications are required
- Section 113.3 Minimum Inspections

A copy of the Notice of Violation, which describes the violations, inspection reports and photos from the inspections, are attached.

Appellant Position

The appellant's appeal application is attached.



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Construction Code

DATE OF ISSUANCE: July 24, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 449 Lawyers Rd., NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd., NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

The purpose of this letter is to rescind the Notice of Violation issued to Eagle Properties and Investments LLC, c/o Monika Jain, Registered Agent, dated July 2, 2018, and to reissue a new Notice of Violation regarding the violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition.

You were issued a Corrective Work Order on May 24, 2018 for violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition, effective July 14, 2014. Staff confirmed on July 19, 2018 that the violations remain to include the violations itemized below discovered on the July 19, 2018 inspection.

Explanation: On July 19, 2018, County staff investigated the above referenced premises and discovered that construction, alterations and installations have been performed without the issuance of the required permits, inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 2

Rear Addition-

A rear two (2) story addition has been constructed; the second level use as a bedroom with the means of egress via an exterior door, the room is without a Smoke Alarm, S/A. Electrical alterations and installations have been performed in this room.

NOTE: Access to the lower level of the structure not available at this time to determine the use of the lower level addition.

Kitchen-

The kitchen has been remodeled to include, but not limited to; a new gas stove replacement, electrical equipment and fixture installations; the counter top serving receptacle placement and spacing is non-code compliant.

Living Room-

New recess light fixture installations performed.

Rear Deck-

An exterior deck, approximately 16' wide, 24' long, 16" high has been constructed at the rear of the dwelling.

The permits required are, but not limited to, the following: Building, Electrical, Mechanical, Plumbing or Demolition.

NOTE: Miscellaneous Building Permit# 181980275, for the front porch repair and window alterations to the rear addition remains open.

Retaining Wall Permit# 041533354, issued 06/01/2004, to build a retaining wall per the Fairfax County Detail remains open without inspections.

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within 10 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Al Sanchez to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 3

- Contact me at (703)324-9321, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Al Sanchez by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-9321 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: Per Sect. 119 of the Virginia Construction Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 30 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 4

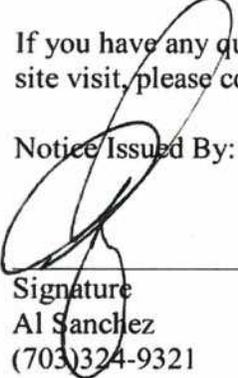
Secretary to the Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703)324-5175, TTY 711

Information and forms can also be obtained at: <https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

Notice Issued By:



Signature
Al Sanchez
(703)324-9321

CC: Case File
Guy Tomberlin, Residential Inspections Branch Chief

PERSONAL SERVICE _____

Being unable to make personal service a copy was delivered in the following manner:

Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport. AIMAZ ASMEKSI

Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

T. Ayoub 0711
SERVING OFFICER

7-24-18 Stacey A. Kincaid, Sheriff
DATE Fairfax County, VA

PERSONAL SERVICE _____

Being unable to make personal service a copy was delivered in the following manner:

Delivered to a person found in charge of usual place of business or employment during business hours and giving information of its purport.

Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode or party named above after giving information its purport. List name, age of recipient, and relation of recipient to party named above.

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

SERVING OFFICER _____ for _____

DATE _____

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SERVING OFFICER _____ for _____

DATE _____

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Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above (Other authorized recipient not found).

Served on a Secretary of the Commonwealth.

Not found.

SERVING OFFICER _____ for _____

DATE _____

DCC Inspection Report

(Inspection # : 7924324)

CASE # : 201802768

Service Request # : 149506

Problem Code : CUOTH: Unpermitted Other

Date Rcvd : 05/15/2018

Assigned To : SANCHEZ

Res.Code : OPEN

Location: 449 Lawyers Rd, Vienna VA 22180-4175

<u>Inspection Date</u>	<u>Inspection #</u>	<u>Inspection Status</u>	<u>Insp Squence #</u>	<u>INSPBY</u>
05/23/18 14:10	7924324	FAILED	2	ASANCH
<p>The investigation with D. Forshee revealed the tenant on site. I introduced us, provided County identification, the reason for the investigation and a business card to him. He said he was the tenant and would call the owner. Mr. Amit Jain, 571-436-3545, arrived shortly after. I introduced us in the same manner; he allowed access to the property and to take photographs.</p> <p>The investigation revealed the following;</p> <p>The existing concrete open porch and steps, located at the main means of egress,(front entrance), have been altered with the overlay of new concrete. The geometry of the stairs, riser height/tread length, appear to be non-compliant; measurements taken revealed; highest riser approximately 9' lowest riser height 7', more than 3/8" difference in height throughout the flight of stairs.</p> <p>The landing height to grade exceed 30" therefore requiring a guard rail; the existing iron guard rail was re-installed. The configuration of the guard rail is not constants with the configuration of the new construction. The railing length does not reach the dwelling brick wall for support, therefore a wood frame has been installed between the wall and the termination of the railing; the rail height, measured from the tread nosing is under 34" throughout the flight of stairs.</p> <p>The rear addition- I informed Mr. Jain that the addition has been altered from a previous configuration and showed him GEM pictures. He said he added siding to the addition. The alterations are removing windows on both upper and lower levels; access to perform an investigation of the interior were denied.</p> <p>Monika Jain, Registered Agent 445 Windover AV, NW, Vienna VA 22180</p> <p>CWO to be issued</p>				

<u>CODE</u>	<u>Code Violation</u>	<u>Status</u>
CERC FINAL	ENTER RESOLUTION CODE	
VCC12 108.1	FAILURE TO OBTAIN REQ PERMIT	
VCC12 113.3	MINIMUM INSPECTIONS	

















DCC Inspection Report

(Inspection # : 7930476)

CASE # : 201802768

Service Request # : 149506

Problem Code : CUOTH: Unpermitted Other

Date Rcvd : 05/15/2018

Assigned To : SANCHEZ

Res.Code : OPEN

Location : 449 Lawyers Rd, Vienna VA 22180-4175

<u>Inspection Date</u>	<u>Inspection #</u>	<u>Inspection Status</u>	<u>Insp Sqnce #</u>	<u>INSPBY</u>
07/18/18 12:45	7930476	FAILED	3	ASANCH
<p>The investigation with D. Forshee revealed the tenant, John Gupta, 703.475.5379, in front of the property. I introduced us, provided identification, the reason for the investigation. He indicated the owner/agent was in a meeting and not on site. I informed him the building inspectors was at the property earlier this morning, but no one was on site for the inspection. We went to the front porch to see the work performed. I indicated the new guard railing system may require an evaluation report for the final inspection and that he should inform the owner. I inquired about the rear addition and it's use, at which time he allowed entry and to take photographs.</p> <p>The investigation revealed the following;</p> <p>The 2nd level of the addition interior is finished and used as a bedroom. The room has a door to the exterior, but is without a S.A.; non-code compliant electrical installations performed in the room.</p> <p>The kitchen has been remodeled to include; a gas stove replacement, plumbing fixtures, and electrical installations; countertop receptacle placement non-compliant.</p> <p>An exterior deck, approximately 16' wide, 24' long, 18" high has been constructed at the rear of the property.</p> <p>I asked to see the lower level of the rear addition, the tenant indicated he could not allow me access as his sister was not at home. She lived in the basement. I informed the tenant that I would schedule another investigation while his sister was present to gain access to the basement so as to reveal other violations, if any, for life safety reasons.</p> <p>I requested he inform the owner/agent to not schedule any further inspections until I completed my investigation.</p> <p>The NOV will be issued to include the additional violations.</p>				

<u>CODE</u>	<u>Code Violation</u>	<u>Status</u>
CERC FINAL	ENTER RESOLUTION CODE	
VCC12 108.1	FAILURE TO OBTAIN REQ PERMIT	
VCC12 113.3	MINIMUM INSPECTIONS	



**CHAP PETERSEN
& ASSOCIATES, PLC**

J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

August 3, 2018

180808.OAP
AUG - 8 2018

Via First-Class Mail and E-Mail

Chairman, Fairfax County Board of Building Code Appeals
12055 Government Center Parkway, Suite 334
Fairfax, Virginia 22035-5504
Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov

**Re: Building Code Appeal Request
Case #201802768; SR #149506**

Dear Secretary:

Please be advised that this firm represents Eagle Properties and Investments, LLC ("Eagle Properties"), which owns the property at 449 Lawyers Road, NW, in the Town of Vienna.

I am in receipt of the Notice of Violation issued on July 24, 2018 (the "Order") in the above-referenced case. This letter is to confirm an appeal request of the Order on behalf of Eagle Properties. As required by Part I of the Virginia Uniform Statewide Building Code 2012, Section 119.5., please find enclosed (i) the written request for appeal, (ii) a copy of the building official's decision and (iii) relevant documents thereto. Additionally, please find enclosed a check for \$208.00 as required at the time of submittal.

If you have any further questions or concerns, please contact me.

Very truly yours,

J. Chapman Petersen

Enclosures as stated

Cc: Client
Al Sanchez, Issuing Investigator (by email only - Al.Sanchez@fairfaxcounty.gov)
Marc E. Gori, Esq., Assistant County Attorney (by email only - Marc.Gori@fairfaxcounty.gov)



Building Code Appeal Request

PROJECT INFORMATION

Project Name: N/A
Project Address: 449 Lawyers Rd., NW, Vienna, VA 22180
Permit or case number: 201802768 Tax map number: 0381 06 0097

APPLICANT INFORMATION

Applicant Name: J. Chapman Petersen, Esq. Owner Owner's agent
Address: 3970 Chain Bridge Road
City: Fairfax State: VA ZIP: 22030
Phone: 571-459-2510 Email: jcp@petersenfirm.com

OWNER INFORMATION

See applicant information
Owner Name: Eagle Properties and Investments LLC
Address: 445 Windover Avenue
City: Vienna State: VA ZIP: 22190
Phone: 571-436-3545 Email: amit@eagleinvestmentsllc.com

APPEAL INFORMATION

Appealing decision made on the date of by Building Official Fire Official Property Maintenance Official
rendered on the following date: 07/24/18
Code(s) (IBC, IMC, IPMC, etc.) and year-edition: Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code, 2012 Edition
Section(s): 108.1; 113.3

REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:

On July 17, 2018, after a Building Permit was issued, an inspection was to occur by a county inspector. However, inspector Al Sanchez circumvented Virginia Code § 36-105 and the USBC by entering the Property on July 18, 2018 (along with a fire marshal) without informing the owner and without the owner or the tenant's permission. Neither Virginia law, Federal law or the USBC permits such warrantless searches. Specifically, without an inspection warrant, as required by Virginia Code § 36-105(C)(3) and USBC, Part I, Section 104.1, and without the owner or the tenant's permission, inspector Al Sanchez forced himself into the Property, thereby citing violations of the USBC. The result of Al Sanchez's actions has resulted in the unlawful issuance of the Notice of Violation ("NOV") and a deprivation of the owner's constitutional rights. Further, only minor and ordinary repair work was made to the above-referenced property, as the current owner purchased the property in late 2017. As per the USBC 2012, the current owner made no alterations, as alleged in the NOV that would require Building, Electrical, Mechanical, Plumbing or Demolition permits. All required permits were obtained and no work adversely affected public health or general safety of others.

Please return the completed form and any supporting documentation to the address or email below. A \$208 fee is required at the time of submittal. The application will not be further processed until this fee has been collected.

Chairman, Fairfax County Board of Building Code Appeals
12055 Government Center Parkway, Suite 334
Fairfax, VA 22035-5504
Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov

BBCA appeal_request 2018



LAND DEVELOPMENT
SERVICES

Fairfax County, Virginia

BUILDING PERMIT

MISCELLANEOUS BUILDING WK RES

Permit Number: 181980275

Issued Date: 07/17/2018

Tax Map ID: 038-1 / 06 / 10097

Job Address: 449 Lawyers Rd NW
Vienna, VA 22180-4175

Plan No.: W-18-4391

Owner/Tenant:

Contractor:

OWNER IS CONTRACTOR

EAGLE PROPERTIES AND INVESTMENTS LLC
445 Windover Ave Nw
Vienna, Va 22180
(571)436-3545

Mechanic's Lien Agent:

Structure: SINGLE FAMILY DWELLING

Code: IRC 2012

Group: R5

Type of Construction: VB

Has permission, according to approved plans, applications and restrictions of record to:

PER CERC CASE 201802768: ALTERATIONS TO REPAIR FRONT CONCRETE STAIRS, PORCH AND
INSTALL IRON RAILING PER PLAN. ALTERATIONS TO 2 STORY REAR ADDITION: REMOVE AND FRAME
IN WINDOWS (NON STRUCTURAL).

BUILDING OFFICIAL *Brian J. Jolley*

- A copy of this permit must be posted at the construction site for the duration of the permit.
- This permit does not constitute approval from your homeowners' association and its related covenants.
- This permit will expire if work does not commence in six months, or if work is suspended for six months.
- This permit holder is responsible to contact the county when stages of construction are reached that require inspections.
- To schedule inspections call our Inspection office at 703-631-5101, TTY 711 during business hours. Inspection may also be scheduled online at www.fairfaxcounty.gov/fido.
- For questions regarding this permit call the Permit Application Center at 703-222-0801, TTY 711.
- Call Miss Utility before you dig at 811.

INTERIOR ALTERATION



COUNTY OF FAIRFAX, VIRGINIA
 BUILDING PLAN REVIEW DIVISION
 LAND DEVELOPMENT SERVICES, DPWES

Reference Code: 2012 VUSBC
 2012 International Residential Code
 (R-5, VB)

BUILDING PLANNING:

- Landings required at the top and bottom of stairs and egress doors, not less than the width of the stair or door and measured 36" in direction of travel. Exception: top of stairs provided door does not swing over stairs.
- Handrail height shall be 34-38", measured from nosing of the step. Handrails shall be continuous and return to a wall.
- Minimum guardrail height shall be 36". For stair sides, guardrails shall have a minimum height of 34". Guards shall not permit the passage of a 4" diameter sphere.
- Safety glass is required:
 - Within 24" arc from vertical edge of a closed door and less than 60" above the floor
 - In fixed panels more than 9-SF; lowest edge less than 18" above the floor; and top edge higher than 36"
- Around tubs and showers
- Skylights
- Minimum ceiling height is 7' for habitable rooms, kitchens, bathrooms, habitable basements and hallways. Basements without habitable spaces shall be at least 6'8".
- Every dwelling shall have at least one room with at least 120 s.f. Other rooms shall not be less than 70 s.f., except kitchens. Habitable rooms shall not be less than 7' in any horizontal dimension, except kitchens.

FIRE PREVENTION:

- Smoke alarms shall be in each bedroom, outside each separate sleeping area and at each level. They shall be interconnected and hardwired to the electric panel and have a battery backup.
- Carbon monoxide alarms are required for new construction and shall be located outside of sleeping areas when fuel-fired appliances are installed or the dwelling has an attached garage.
- Townhouses shall have a 2-hour party wall between units. No penetrations are allowed in that wall.
- Fire blocking shall be provided:
 - o Vertically at ceiling, floor levels in concealed spaces of stud walls and studded-off spaces at masonry and concrete walls.
 - o Horizontally at intervals not exceeding 10 feet.
 - o At all interconnections between concealed vert. and horiz. spaces, i.e., soffits, drop ceilings, and cove ceilings.
 - o At openings around vents, pipes, ducts, fireplaces, and chimneys at ceiling, floor levels with noncombustible material.
- Emergency Escape windows - A sill height of 44" maximum; a net clear opening of 5.7 SF minimum (5 SF at grade floor; a minimum clear height of 24" and clear width of 20" is required for habitual basement's and each bedroom.
- Window wells for emergency egress windows - minimum clear area 9 SF, minimum horizontal projection and width 36". Ladder or steps required for access out of well when well is deeper than 44". Fall protection shall be provided when depth of well exceeds 48".
- When a window opening is located more than 72" above finished grade, the lowest part of the clear opening shall be a minimum of 18" above the finished floor. Glazing between the floor and 18" shall be fixed or shall not pass a 4" sphere.
- Under stair accessible space shall have walls and soffits protected on the enclosed side with 1/2" gypsum board.

FRAMING CONSTRUCTION:

- Studs may be notched a maximum of 25% of the stud's depth for bearing walls, and 40% for nonbearing walls. The edge of the hole may be no closer than 5/8" to the edge of the stud.
- Notching and cutting of joists shall not exceed 1/6 of depth and shall not be located in the middle third of span. Notch depth at ends shall be a maximum of 25% of members' depth. Holes shall not be bored within 2" of top or bottom of joists; maximum diameter shall be 1/3 of the depth of the member.
- Splices in the top and bottom portion of the double top plate shall be staggered 4' minimum. Top plates may be notched a maximum of 50% of their width, but must be reinforced with 24 gauge steel angle, which spans to adjacent studs.
- Do not cut the top and bottom of manufactured floor joists.
- Floor framing beneath oversized bathtubs shall be doubled or shown to adequately support the additional loading.

MECHANICAL REQUIREMENTS:

- Door access to water heater and/or furnace shall be large enough to remove equipment and not less than 20" wide.
- Unobstructed working space not less than 30" wide.
- Combustion air required for fuel burning appliances - 50 cubic feet per 1,000 Btu/h. 2 permanent openings to adjacent spaces: one located within 12" of ceiling and one 12" from the floor. Each opening shall have free area equal to a minimum of 1 square inch per 1,000 Btu/h input rating of all appliances, but not less than 100 square inches. Combustion air cannot be received from bedrooms, bathrooms or toilet rooms. Unvented gas logs are not permitted in bedrooms.

ELECTRICAL REQUIREMENTS:

- Panel board clearances - 36" depth; 30" width - clear floor space.

- Outlets required within 6' each side of all doors and openings, and 12' thereafter. On any wall 2' long and longer.
- GFCI receptacles required in bathrooms, counters, garages and unfinished areas.
- Combination type arc fault circuit interrupters are required on all bedroom branch circuits.
- At least one wall-switch-controlled lighting outlet for every habitable room, bathroom, and hallway.
- All stairs shall be provided with an artificial light source of at least 1 foot candle, which will fully illuminate all treads and landings
- Light activation - Controls for interior stairway lighting shall be accessible at the top and bottom of each stair without traversing any step of the stair.

PLUMBING REQUIREMENTS:

- Plumbing fixture clearances;
 - Lavatory - 21" in front
 - Water closet - 15" center to side
 - Water closet - 21" in front
 - Shower minimum size 30" x 30"
 - Shower - 24" in front of opening
- Showers and combination bathtub/shower valves shall be equipped with pressure balance, thermostatic mixing or combination pressure balance/ thermo-static mixing valves with high limit stops in accordance with ASSE 1016.

INSPECTION REQUIREMENTS

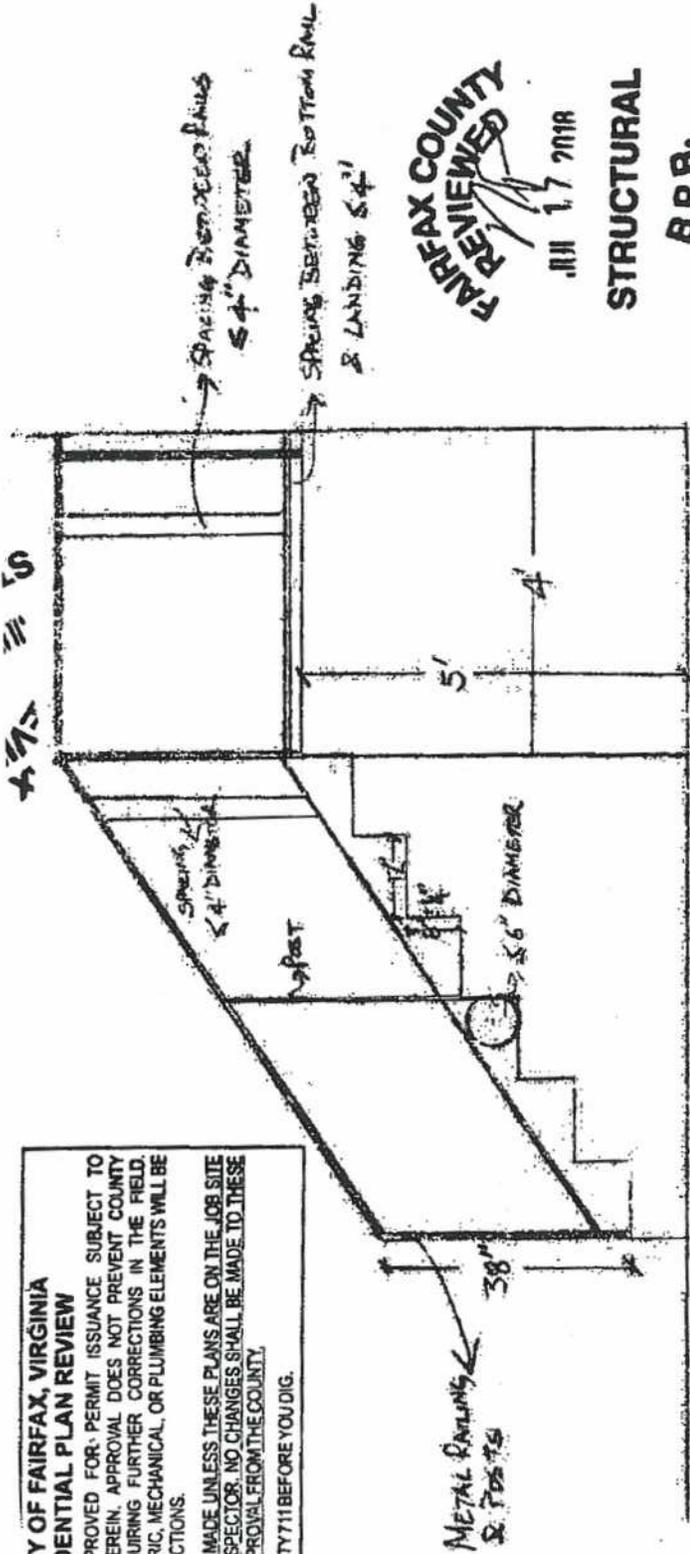
- Combined inspection for building and trade permits are required.
- County approved plat or grading plan, building plans and HVAC certification must be available on jobsite.
 - Schedule Inspections: www.fairfaxcounty.gov/fido

**COUNTY OF FAIRFAX, VIRGINIA
RESIDENTIAL PLAN REVIEW**

THESE PLANS ARE APPROVED FOR PERMIT ISSUANCE SUBJECT TO CORRECTIONS NOTED HEREIN. APPROVAL DOES NOT PREVENT COUNTY INSPECTORS FROM REQUIRING FURTHER CORRECTIONS IN THE FIELD. COMPLIANCE WITH ELECTRIC, MECHANICAL, OR PLUMBING ELEMENTS WILL BE EVALUATED DURING INSPECTIONS.

NO INSPECTIONS WILL BE MADE UNLESS THESE PLANS ARE ON THE JOB SITE AND AVAILABLE TO THE INSPECTOR. NO CHANGES SHALL BE MADE TO THESE PLANS WITHOUT PRIOR APPROVAL FROM THE COUNTY.

CALL MISS UTILITY AT 811, TTY 7711 BEFORE YOU DIG.



**FAIRFAX COUNTY
REVIEWED**

MAR 17 2018

STRUCTURAL

B.P.R.

FRONT STOOP & STEPS/MASONRY

PROJECT 1: REPAIR FRONT MASONRY PORCH & RAILINGS TO FAIRFAX COUNTY FIRE & RAILWAY DEPT.

PROJECT 2: CLOSE TWO WINDOWS IN THE BACK SUNROOM (EXISTING). NO STRUCTURAL WORK.

PROPERTY ADDRESS: 449 LAWOYERS RD, VIENNA 22180
 DRAWN BY: AMIT JAIN / EAGLE PROPERTIES & INVESTMENTS
 445 WINDOGE AVE, VIENNA 22180

SCALE: 1/2" = 1'

AL Sanjivan 930

Address the building code violations in CASE # 201802768 and violations are adequately corrected. The permit process, Building Plan Department, apply. Date: 3/12/18



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Construction Code

DATE OF ISSUANCE: July 24, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover AV NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd., NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

The purpose of this letter is to rescind the Notice of Violation issued to Eagle Properties and Investments LLC, c/o Monika Jain, Registered Agent, dated July 2, 2018, and to reissue a new Notice of Violation regarding the violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition.

You were issued a Corrective Work Order on May 24, 2018 for violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition, effective July 14, 2014. Staff confirmed on July 19, 2018 that the violations remain to include the violations itemized below discovered on the July 19, 2018 inspection.

Explanation: On July 19, 2018, County staff investigated the above referenced premises and discovered that construction, alterations and installations have been performed without the issuance of the required permits, inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 2

Rear Addition-

A rear two (2) story addition has been constructed; the second level use as a bedroom with the means of egress via an exterior door, the room is without a Smoke Alarm, S/A. Electrical alterations and installations have been performed in this room.

NOTE: Access to the lower level of the structure not available at this time to determine the use of the lower level addition.

Kitchen-

The kitchen has been remodeled to include, but not limited to; a new gas stove replacement, electrical equipment and fixture installations; the counter top serving receptacle placement and spacing is non-code compliant.

Living Room-

New recess light fixture installations performed.

Rear Deck-

An exterior deck, approximately 16' wide, 24' long, 16" high has been constructed at the rear of the dwelling.

The permits required are, but not limited to, the following: Building, Electrical, Mechanical, Plumbing or Demolition.

NOTE: Miscellaneous Building Permit# 181980275, for the front porch repair and window alterations to the rear addition remains open.

Retaining Wall Permit# 041533354, issued 06/01/2004, to build a retaining wall per the Fairfax County Detail remains open without inspections.

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within 10 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Al Sanchez to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 3

- Contact me at (703)324-9321, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- **BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.**

Note:

*When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.

Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801

*When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.

*If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.

You are directed to notify Al Sanchez by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-9321 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: Per Sect. 119 of the Virginia Construction Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 30 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 4

Secretary to the Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703)324-5175, TTY 711

Information and forms can also be obtained at: <https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

Notice Issued By:



Signature
Al Sanchez
(703)324-9321

CC: Case File
Guy Tomberlin, Residential Inspections Branch Chief



**CHAP PETERSEN
& ASSOCIATES, PLC**

J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

August 2, 2018

Via First-Class Mail and E-Mail

Fairfax County Department of Code Compliance
c/o Al Sanchez, Investigating Officer
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Al.Sanchez@fairfaxcounty.gov

**Re: Notice of Violation – 449 Lawyers Rd., NW, Vienna, VA 22180
Case #: 201802768 SR#: 149506**

Dear Mr. Sanchez:

Please be advised that this firm represents Eagle Properties and Investments, LLC ("Eagle Properties"), which owns the property at 449 Lawyers Rd., NW, Vienna, VA 22180 (the "Property") in the Town of Vienna.

We are in receipt of a Building Permit issued on July 17, 2018 and a Notice of Violation ("NOV") issued on July 24, 2018 against Eagle Properties citing violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code, 2012 Edition ("USBC"). Please find the Building Permit and the Notice of Violation attached hereto respectively as Exhibit A and B.

On July 17, 2018, after the Building Permit was issued, an inspection was to occur by a county inspector. However, you have circumvented Virginia Code § 36-105 and the USBC by entering the Property on July 18, 2018 (along with a fire marshal) without informing my client and without his or the tenant's permission. Neither Virginia law, Federal law or the USBC permits such warrantless searches. As a result of your reckless and wanton conduct, you have violated my client's Fourth Amendment rights against unreasonable and warrantless searches of his property. Specifically, without an inspection warrant, as required by Virginia Code § 36-105(C)(3) and USBC, Part I, Section 104.1, and without my client or the tenant's permission, you forced yourself into the Property. The result of your actions has resulted in the unlawful issuance of the NOV and a deprivation of my client's constitutional rights.

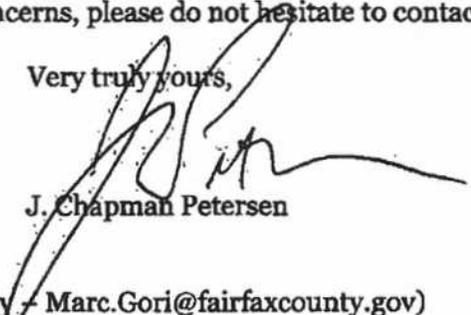
Letter to Al Sanchez
Page 2
August 2, 2018

Please be advised that a cause of action may be brought against a municipality under 42 U.S.C. § 1983 when "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers." *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). A government is liable if "under some official policy, [it] 'causes' an employee to violate another's constitutional rights." *Id.* at 692. "[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." *Id.* at 694. Your actions have been reckless and in defiance of my client's constitutional rights. Specifically, you were required to obtain an inspection warrant or my client's consent prior to entering the Property on July 18, 2018. Rather than obtaining either of the aforesaid, you forced yourself into the Property, in violation of Virginia Code § 36-105(C)(3), USBC, Part I, Section 104.1 and my client's Fourth Amendment rights. Further, you have harassed and intimidated my client's tenant at the Property during your unlawful entrance – such conduct is also sanctionable at law.

Please be advised not to take any further action regarding this matter, as I will lodge an appeal to LBBCA on behalf of Eagle Properties regarding the NOV pursuant to Virginia Code 36-105(A) and USBC, Part I, Section 119. Any further action by you will be considered as retaliatory government action, which is prohibited by 42 U.S.C. 1983.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



J. Chapman Petersen

Cc: Client
Marc E. Gori, Esq. (by email only) - Marc.Gori@fairfaxcounty.gov



LAND DEVELOPMENT
SERVICES

Fairfax County, Virginia

BUILDING PERMIT

MISCELLANEOUS BUILDING WK RES

Permit Number: 181980275

Issued Date: 07/17/2018

Tax Map ID: 038-1/06/10097

Job Address: 449 Lawyers Rd NW
Vienna, VA 22180-4175

Plan No.: W-18-4391

Owner/Tenant:

Contractor:

OWNER IS CONTRACTOR

EAGLE PROPERTIES AND INVESTMENTS LLC
445 Windover Ave Nw
Vienna, Va 22180
(571)436-3545

Mechanic's Lien Agent:

Structure: SINGLE FAMILY DWELLING

Code: IRC 2012

Group: R5

Type of Construction: VB

Has permission, according to approved plans, applications and restrictions of record to:

PER CERC CASE 201802768: ALTERATIONS TO REPAIR FRONT CONCRETE STAIRS, PORCH AND
INSTALL IRON RAILING PER PLAN. ALTERATIONS TO 2 STORY REAR ADDITION: REMOVE AND FRAME
IN WINDOWS (NON STRUCTURAL).

BUILDING OFFICIAL *Brian J. Joley*

- A copy of this permit must be posted at the construction site for the duration of the permit.
- This permit does not constitute approval from your homeowners' association and its related covenants.
- This permit will expire if work does not commence in six months, or if work is suspended for six months.
- This permit holder is responsible to contact the county when stages of construction are reached that require inspections.
- To schedule inspections call our Inspection office at 703-631-5101, TTY 711 during business hours. Inspection may also be scheduled online at www.fairfaxcounty.gov/fido.
- For questions regarding this permit call the Permit Application Center at 703-222-0801, TTY 711.
- Call Miss Utility before you dig at 811.





County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Construction Code

DATE OF ISSUANCE: July 24, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover AV NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd., NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

The purpose of this letter is to rescind the Notice of Violation issued to Eagle Properties and Investments LLC, c/o Monika Jain, Registered Agent, dated July 2, 2018, and to reissue a new Notice of Violation regarding the violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition.

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Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code



Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 2

Rear Addition-

A rear two (2) story addition has been constructed; the second level use as a bedroom with the means of egress via an exterior door, the room is without a Smoke Alarm, S/A. Electrical alterations and installations have been performed in this room.

NOTE: Access to the lower level of the structure not available at this time to determine the use of the lower level addition.

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Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 3

- Contact me at (703)324-9321, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
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Note:

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Permit Application Center
The Herrity Building
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Fairfax, Virginia 22035
Telephone: 703-222-0801

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Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 4

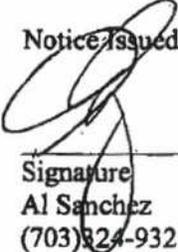
Secretary to the Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703)324-5175, TTY 711

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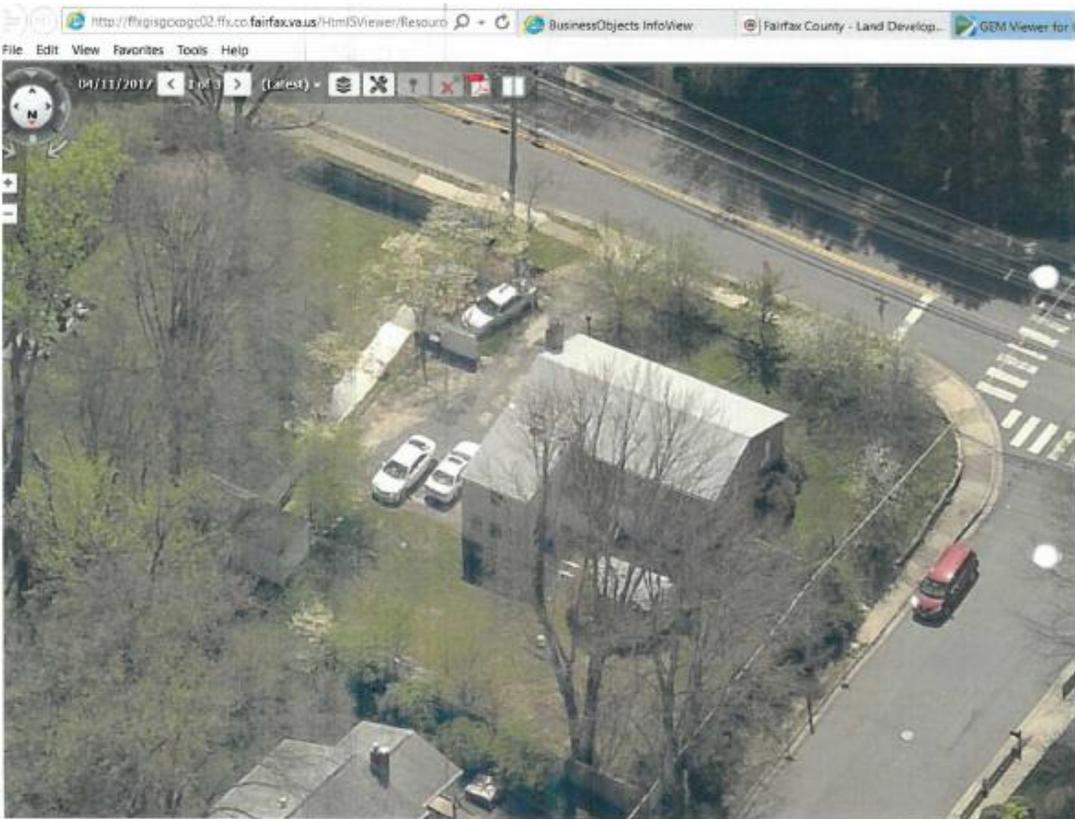
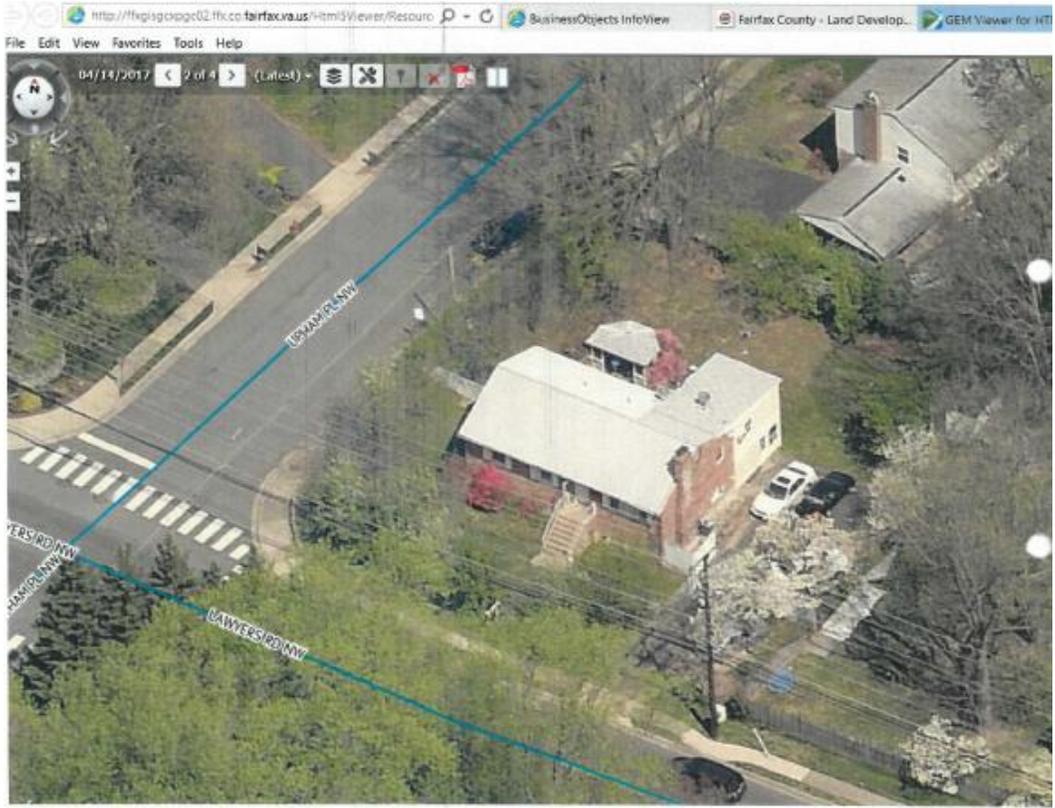
If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

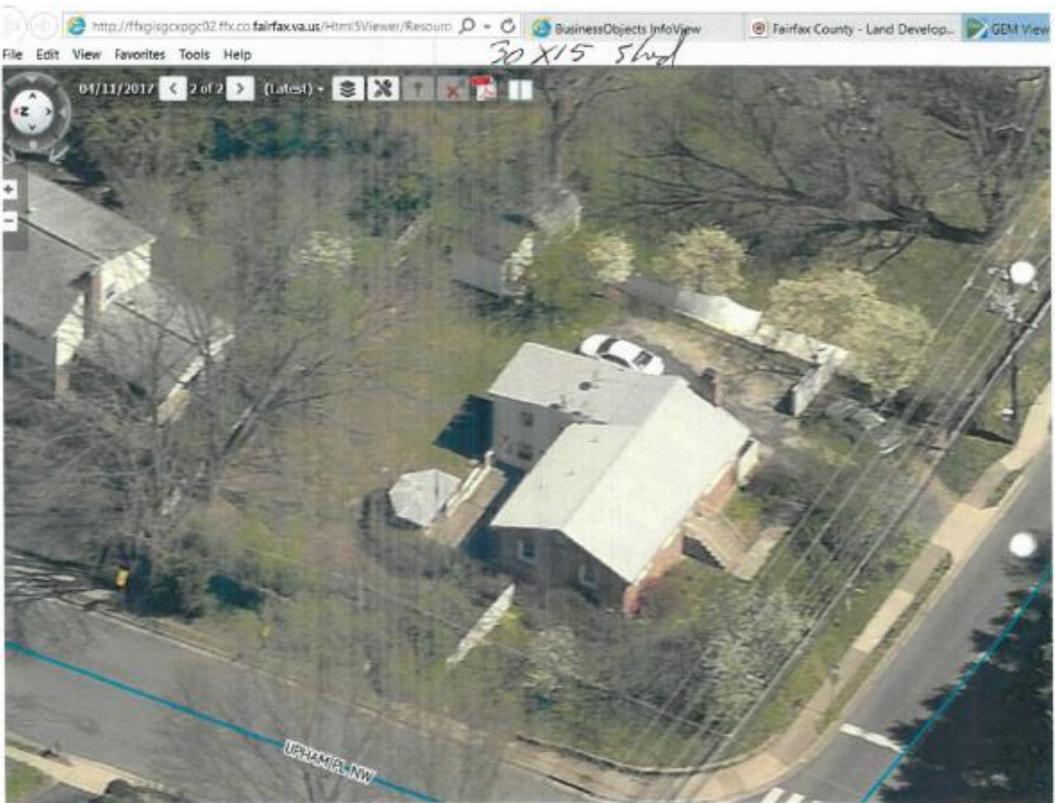
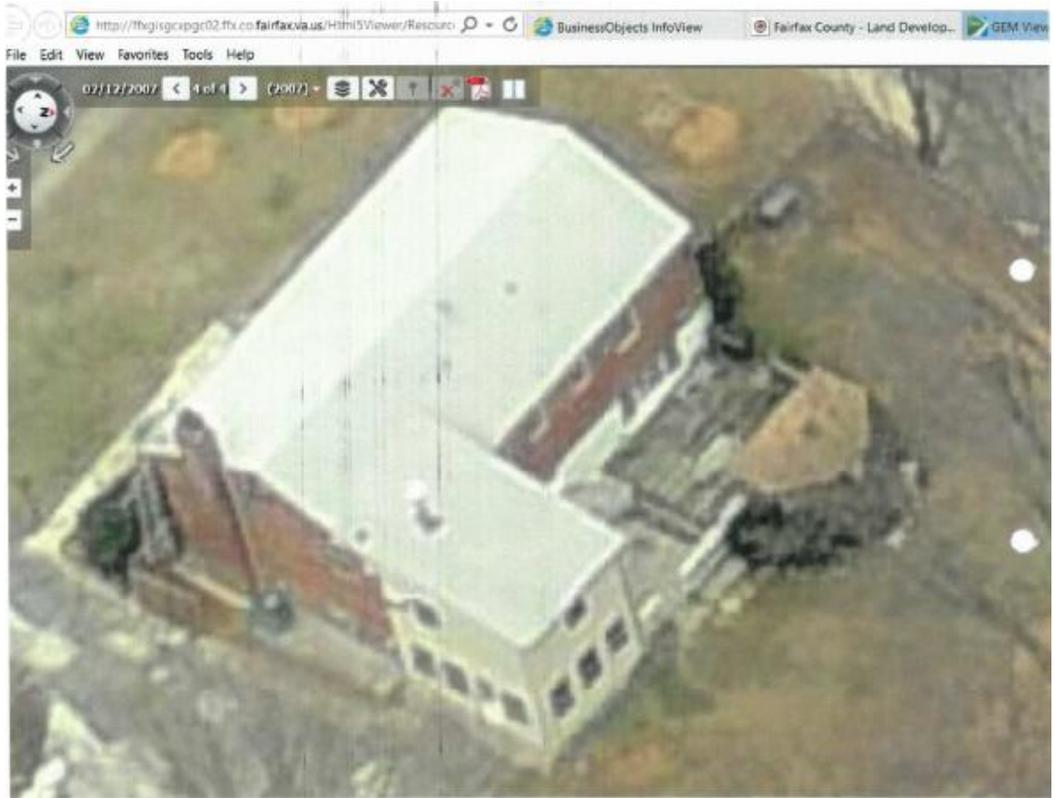
Notice Issued By:

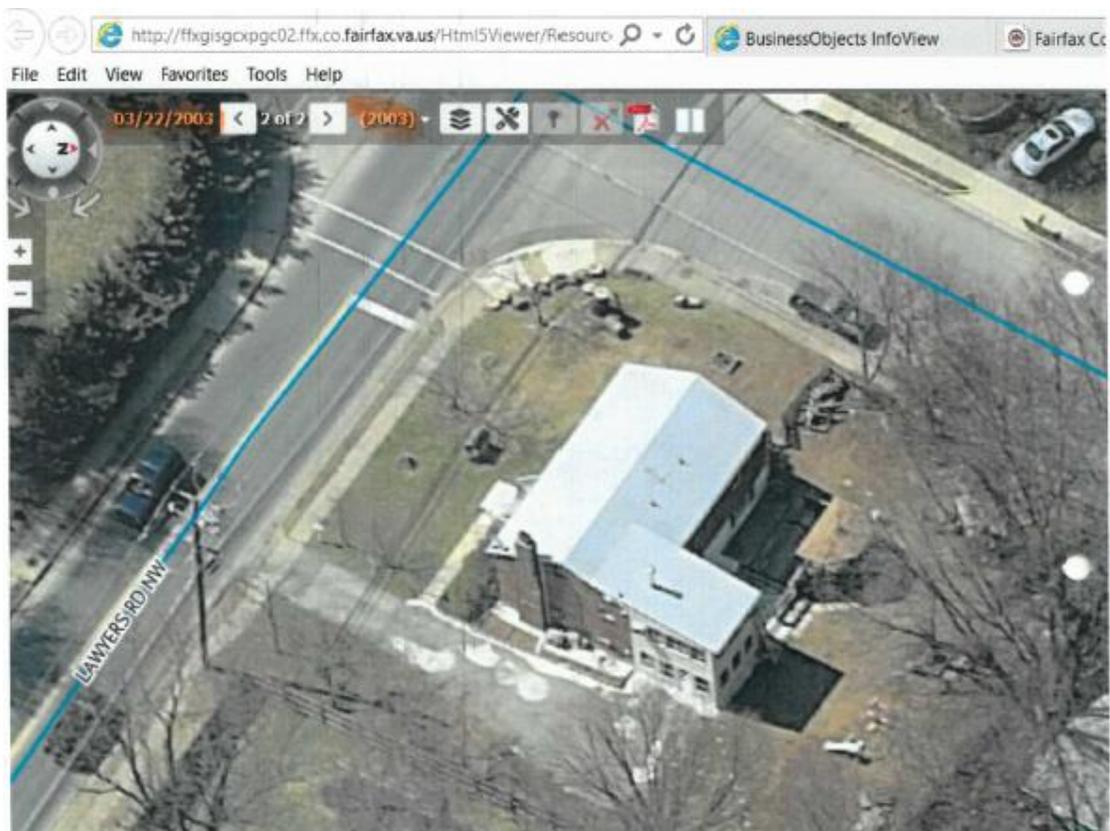
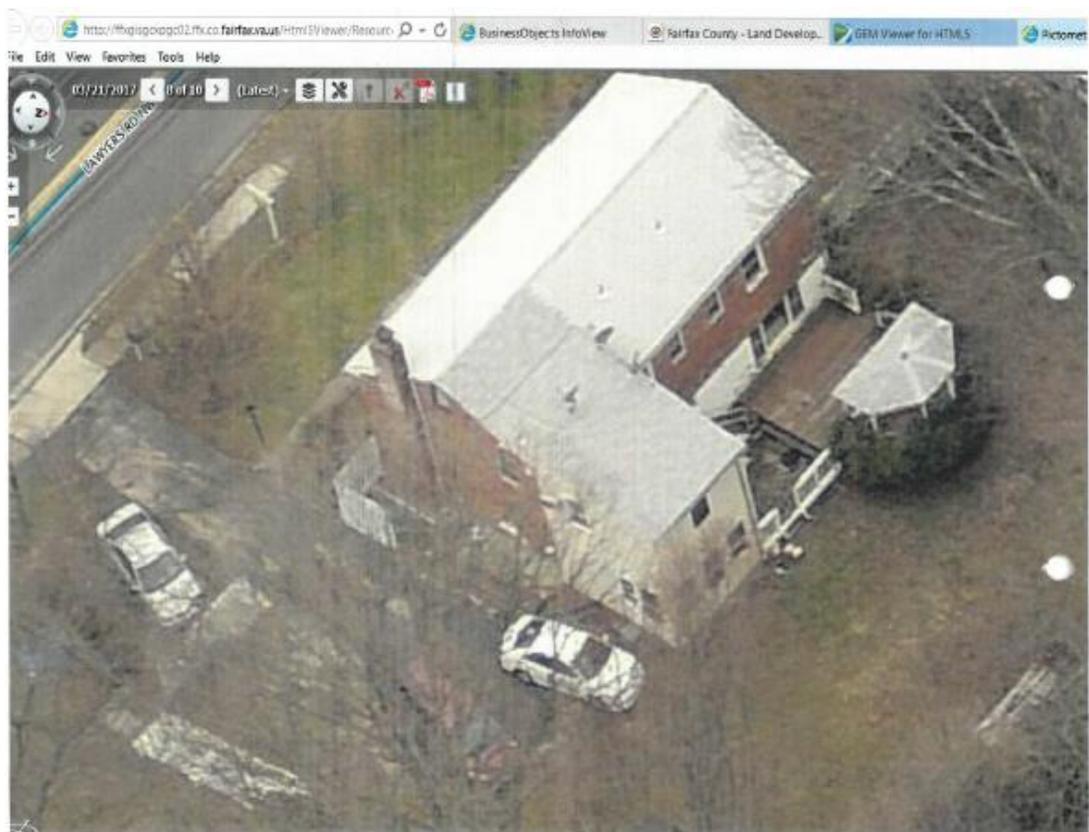


Signature
Al Sanchez
(703)324-9321

CC: Case File
Guy Tomberlin, Residential Inspections Branch Chief







COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

- Uniform Statewide Building Code
- Statewide Fire Prevention Code
- Industrialized Building Safety Regulations
- Amusement Device Regulations



Appealing Party Information (name, address, telephone number and email address):

Eagle Properties and Investments LLC

445 WINDOVER AVENUE, VIENNA, VA 22180

571-436-3545; amit@eagleinvestmentsllc.com; dalip@eagleinvestmentsllc.com

Opposing Party Information (name, address, telephone number and email address of all other parties):

Fairfax County DCC

12055 Government Center Parkway, Suite 1016, Fairfax, VA 22035

703-324-1300; DCCCodeComplianceE-mail@fairfaxcounty.gov; al.sanchez@fairfaxcounty.gov

Additional Information (to be submitted with this application)

- Copy of enforcement decision being appealed
- Copy of record and decision of local government appeals board (if applicable and available)
- Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 31 day of October, 2018 a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: _____

Name of Applicant: J. Chapman Petersen (attorney for Eagle Properties & Investments LLC)
(please print or type)

RESOLUTION

WHEREAS, the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of enforcement of the USBC Code/ 2012 Edition;

and

WHEREAS, an appeal has been timely filed and brought to the attention of the Board; and
WHEREAS, a hearing has been duly held to consider the aforementioned appeal; and
WHEREAS, the Board has fully deliberated this matter; now, therefore, be it

RESOLVED, that the matter of

Appeal No. #180808.0 AP
In RE: EAGLE PROPERTIES LLC v. FC DEPARTMENT OF CODE COMPLIANCE

The appeal is hereby DENIED for the reasons set out below.

- DECISIONS BASED ON 4TH AMENDMENT RIGHTS VIS-A-VIS ACCESS TO INSPECT ARE OUTSIDE THE SCOPE OF THE BOARD'S RESPONSIBILITY
 - WORK DONE ON THE STRUCTURE PREVIOUSLY PERMITTED (HANDRAIL STAIRS AND WINDOW ENCLOSURE) AND UNPERMITTED WORK
- FURTHER, be it known that: SUBJECT TO THE USBC SHOULD BE INSPECTED AND APPROVED OR PERMITTED AND APPROVED.

1. This decision is solely for this case and its surrounding circumstances;
2. This decision does not serve as a precedent for any future cases or situations, regardless of how similar they may appear;
3. (If appropriate to the motion) No significant adverse conditions to life safety will result from this action; and
4. All of the following conditions be observed.

- a. N/A
- b. _____
- c. _____

Date: 10-10-18

Signature: [Handwritten Signature]
Chairman, Board of Building Code Appeals

Note: Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219 or by calling 804.371.7150.

Carla Guerra-Moran hereby certify that this is
CUSTODIAN
a true copy of a Fairfax County Department of Land Development
Services record of which I am a custodian

Carla Guerra-Moran
CUSTODIAN

Brian Foley hereby certify that this is
SUPERVISOR OF CUSTODIAN
a true copy of a Fairfax County Department of Land Development
Services record of which Carla Guerra-Moran is the
CUSTODIAN
custodian and that Carla Guerra-Moran reports to me
CUSTODIAN

B. Foley
SUPERVISOR OF CUSTODIAN

VIRGINIA:

State Building Code Technical Review Board

_____)	
In RE Eagle Properties)	
& Investments LLC)	
)	
Appellant)	
)	
v.)	Appeal No. 180808.o AP
)	
Fairfax County DCC)	
)	
Appellee)	
_____)	

APPELLANT’S STATEMENT OF SPECIFIC RELIEF SOUGHT

COMES NOW Appellant Eagle Properties and Investments LLC (“Eagle”), by counsel, pursuant to the Uniform State Building Code, 2012 Edition (“USBC”), § 119.8, and Virginia Code 13VAC5-63-190(H) and §36-114, hereby states the following in support of its Statement of Specific Relief Sought:

Statement of Facts

The property subject to this appeal is 449 Lawyers Road, NW, located in the Town of Vienna, Virginia (the “Property”).

On July 17, 2018, after a Building Permit was issued, an inspection was to occur by a county inspector. However, inspector Al Sanchez without informing the owner and without the owner or the tenant’s permission entered the Property. This is the basis for Eagle’s appeal – a violation of its Fourth Amendment rights that resulted in the Notice of Violation and, now, this current appeal.

Jurisdiction

The General Assembly established the Review Board and gave it “the power and duty to hear all appeals from decisions [of the local board of Building Code appeals] arising under application of the Building Code.” Code § 36-114. “Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).” *Id.* “[N]o appeal to the . . . Review Board shall lie prior to a final determination by the local board of Building Code Appeals” (“LBBCA”). Code § 36-105. Here, the LBBCA has issued its resolution and therefore this body has jurisdiction over this appeal.

Standard of Review

On appeal of an agency decision,

the sole determination as to factual issues is whether substantial evidence exists in the agency record to support the agency’s decision. The reviewing court may reject the agency’s findings of fact only if, considering the record as a whole, a reasonable mind necessarily would come to a different conclusion.

Avalon Assisted Living Facilities v. Zager, 39 Va. App. 484, 499-500 (2002)

(quoting *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 242, 369 S.E.2d 1, 7, 4 Va. Law Rep. 2665 (1988)). In making this determination, “the reviewing court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.” *Id.* On review of an agency’s decision, the sole question regarding “factual issues is whether substantial evidence exists in the agency record to support the agency’s decision.” *Strawbridge v. County of Chesterfield*, 23 Va. App. 493, 503 (1996) (quoting *Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 242, 369 S.E.2d 1, 7 (1988)).

“On appeal of an agency’s determination on issues of law, the standards differ.”

If the issue falls outside the area generally entrusted to the agency, and is one in which the courts have special competence, i.e., the common law or constitutional law, the court need not defer to the agency's interpretation.

Id. at 243-44, 369 S.E.2d at 8 (quoting *Hi-Craft Clothing Co. v. NLRB*, 660 F.2d 910, 914-15 (3d Cir. 1981)) (internal quotations omitted).

However, where the question involves an interpretation which is within the specialized competence of the agency and the agency has been entrusted with wide discretion by the General Assembly, the agency's decision is entitled to special weight in the courts[, and] . . . “judicial interference is permissible only for relief against the arbitrary or capricious action that constitutes a clear abuse of delegated discretion.” *Id.* at 244, 369 S.E.2d at 8 (quoting *Va. Alcoholic Beverage Control Comm'n v. York St. Inn, Inc.*, 220 Va. 310, 315, 257 S.E.2d 851, 855 (1979) (quoting *Schmidt v. Bd. of Adjustment*, 9 N.J. 405, 88 A.2d 607, 615-16 (N.J. 1952)). “No matter how one calibrates judicial deference, the administrative power to interpret a regulation does not include the power to rewrite it.” *Bd. of Supervisors v. State Bldg. Code Tech. Review Bd.*, 52 Va. App. 460, 466 (2008). Courts are required only “to accept only those agency interpretations that are reasonable in light of the principles of construction courts normally employ.” *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 260, 111 S. Ct. 1227, 113 L. Ed. 2d 274 (1991) (Scalia, J., concurring).

“One of the important purposes of the Building Code is to provide for ‘the safety of ultimate construction.’” *Virginia Electric & Power Co. v. Savoy Constr. Co.*, 224 Va. 36, 44 (1982). Another important purpose of the Building Code is to “enhance the safety of those working on the project and, indeed, the safety of the project itself.” *Id.* “The dominant purpose of the Building Code, therefore, is to provide comprehensive protection of the public health and safety.” *Id.*

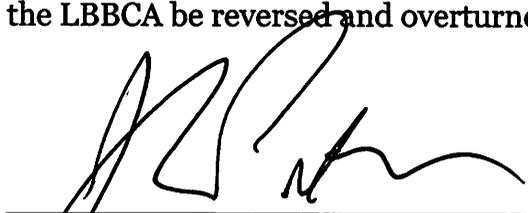
Building code violations are “deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than \$2,500.” Code § 36-106. The statute further provides that “each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense” and that “if the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code.” *Id.* The Building Code must be construed “broadly enough to give substantial effect to this manifest legislative purpose without disregarding its penal effects.” *Id.* (citing 3 *Sutherland Statutory Construction* § 59.05, at 16-17 (4th ed. C. Sands 1974)).

Relief Sought

Neither Virginia law, Federal law or the USBC permits such warrantless searches. Specifically, without an inspection warrant, as required by Virginia Code § 36-105(C)(3) and USBC, Part I, Section 104.1, and without the owner or the tenant’s permission, inspector Al Sanchez (along with a fire marshal) entered the Property. The result of Al Sanchez's actions has resulted in the unlawful issuance of the Notice of Violation (“NOV”) and a deprivation of the owner’s constitutional rights. *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).

Further, only minor and ordinary repair work was made to the above-referenced property, as the current owner purchased the property in late 2017. As per the USBC 2012, the current owner made no alterations, as alleged in the NOV that would require Building, Electrical, Mechanical, Plumbing or Demolition permits. Upon information and belief, all required permits were obtained and no work adversely affected public health or general safety of others.

WHEREFORE Eagle Properties and Investments LLC seeks that the decision of the LBBCA be reversed and overturned for the reasons set forth herein.



**Eagle Properties and Investments LLC
By Counsel**

J. Chapman Petersen, Esq., VSB #37225
David L. Amos, Esq., VSB #87271
CHAP PETERSEN & ASSOCIATES, PLC
8970 Chain Bridge Road
Fairfax, Virginia 22030
(571) 459-2510 (direct dial)
(571) 459-2307 (facsimile)
jcp@petersenfirm.com
dla@petersenfirm.com



J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

August 3, 2018

Via First-Class Mail and E-Mail

Chairman, Fairfax County Board of Building Code Appeals
12055 Government Center Parkway, Suite 334
Fairfax, Virginia 22035-5504
Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov

Re: **Building Code Appeal Request
Case #201802768; SR #149506**

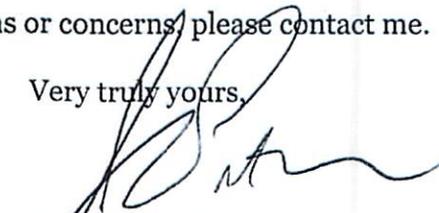
Dear Secretary:

Please be advised that this firm represents Eagle Properties and Investments, LLC (“Eagle Properties”), which owns the property at 449 Lawyers Road, NW, in the Town of Vienna.

I am in receipt of the Notice of Violation issued on July 24, 2018 (the “Order”) in the above-referenced case. This letter is to confirm an appeal request of the Order on behalf of Eagle Properties. As required by Part I of the Virginia Uniform Statewide Building Code 2012, Section 119.5., please find enclosed (i) the written request for appeal, (ii) a copy of the building official’s decision and (iii) relevant documents thereto. Additionally, please find enclosed a check for \$208.00 as required at the time of submittal.

If you have any further questions or concerns, please contact me.

Very truly yours,



J. Chapman Petersen

Enclosures as stated

Cc: Client

Al Sanchez, Issuing Investigator (by email only – Al.Sanchez@fairfaxcounty.gov)
Marc E. Gori, Esq., Assistant County Attorney (by email only – Marc.Gori@fairfaxcounty.gov)



Building Code Appeal Request

PROJECT INFORMATION

Project Name: N/A
Project Address: 449 Lawyers Rd., NW, Vienna, VA 22180
Permit or case number: 201802768 Tax map number: 0381 06 0097

APPLICANT INFORMATION

Applicant Name: J. Chapman Petersen, Esq. Owner Owner's agent
Address: 3970 Chain Bridge Road
City: Fairfax State: VA ZIP: 22030
Phone: 571-459-2510 Email: jcp@petersenfirm.com

OWNER INFORMATION

See applicant information
Owner Name: Eagle Properties and Investments LLC
Address: 445 Windover Avenue
City: Vienna State: VA ZIP: 22190
Phone: 571-436-3545 Email: amit@eagleinvestmentsllc.com

APPEAL INFORMATION

Appealing decision made on the date of by Building Official Fire Official Property Maintenance Official
rendered on the following date: 07/24/18
Code(s) (IBC, IMC, IPMC, etc.) and year-edition: Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code, 2012 Edition
Section(s): 108.1; 113.3

REQUEST/SOLUTION

Describe the code or design deficiency and practical difficulty in complying with the code provision:

On July 17, 2018, after a Building Permit was issued, an inspection was to occur by a county inspector. However, inspector Al Sanchez circumvented Virginia Code § 36-105 and the USBC by entering the Property on July 18, 2018 (along with a fire marshal) without informing the owner and without the owner or the tenant's permission. Neither Virginia law, Federal law or the USBC permits such warrantless searches. Specifically, without an inspection warrant, as required by Virginia Code § 36-105(C)(3) and USBC, Part I, Section 104.1, and without the owner or the tenant's permission, inspector Al Sanchez forced himself into the Property, thereby citing violations of the USBC. The result of Al Sanchez's actions has resulted in the unlawful issuance of the Notice of Violation ("NOV") and a deprivation of the owner's constitutional rights. Further, only minor and ordinary repair work was made to the above-referenced property, as the current owner purchased the property in late 2017. As per the USBC 2012, the current owner made no alterations, as alleged in the NOV that would require Building, Electrical, Mechanical, Plumbing or Demolition permits. All required permits were obtained and no work adversely affected public health or general safety of others.

Please return the completed form and any supporting documentation to the address or email below. A \$208 fee is required at the time of submittal. The application will not be further processed until this fee has been collected.

Chairman, Fairfax County Board of Building Code Appeals
12055 Government Center Parkway, Suite 334
Fairfax, VA 22035-5504
Attention: Secretary to the Board
buildingofficial@fairfaxcounty.gov

BBCA appeal_request 2018



Fairfax County, Virginia

BUILDING PERMIT

MISCELLANEOUS BUILDING WK RES

Permit Number: 181980275

Issued Date: 07/17/2018

Tax Map ID: 038-1 / 06 / 0097

Job Address: 449 Lawyers Rd NW
Vienna, VA 22180-4175

Plan No. : W-18-4391

Owner/Tenant:

Contractor:

OWNER IS CONTRACTOR

EAGLE PROPERTIES AND INVESTMENTS LLC
445 Windover Ave Nw
Vienna, Va 22180
(571)436-3545

Mechanic's Lien Agent:

Structure: SINGLE FAMILY DWELLING

Code: IRC 2012

Group: R5

Type of Construction: VB

Has permission, according to approved plans, applications and restrictions of record to:

PER CERC CASE 201802768: ALTERATIONS TO REPAIR FRONT CONCRETE STAIRS, PORCH AND
INSTALL IRON RAILING PER PLAN. ALTERATIONS TO 2 STORY REAR ADDITION: REMOVE AND FRAME
IN WINDOWS (NON STRUCTURAL).

BUILDING OFFICIAL *Brian J. Jolley*

- A copy of this permit must be posted at the construction site for the duration of the permit.
- This permit does not constitute approval from your homeowners' association and its related covenants.
- This permit will expire if work does not commence in six months, or if work is suspended for six months.
- This permit holder is responsible to contact the county when stages of construction are reached that require inspections.
- To schedule inspections call our Inspection office at 703-631-5101, TTY 711 during business hours. Inspection may also be scheduled online at www.fairfaxcounty.gov/fido.
- For questions regarding this permit call the Permit Application Center at 703-222-0801, TTY 711.
- Call Miss Utility before you dig at 811.

INTERIOR ALTERATION



COUNTY OF FAIRFAX, VIRGINIA
 BUILDING PLAN REVIEW DIVISION
 LAND DEVELOPMENT SERVICES, DPWES

Reference Code: 2012 VUSBC
 2012 International Residential Code
 (R-5, VB)

BUILDING PLANNING:

- Landings required at the top and bottom of stairs and egress doors, not less than the width of the stair or door and measured 36" in direction of travel. Exception: top of stairs provided door does not swing over stairs.
- Handrail height shall be 34-38", measured from nosing of the step. Handrails shall be continuous and return to a wall.
- Minimum guardrail height shall be 36". For stair sides, guardrails shall have a minimum height of 34". Guards shall not permit the passage of a 4" diameter sphere.
- Safety glass is required:
 - Within 24" arc from vertical edge of a closed door and less than 60" above the floor
 - In fixed panels more than 9-SF; lowest edge less than 18" above the floor; and top edge higher than 36"
- Around tubs and showers
- Skylights
- Minimum ceiling height is 7' for habitable rooms, kitchens, bathrooms, habitable basements and hallways. Basements without habitable spaces shall be at least 6'8".
- Every dwelling shall have at least one room with at least 120 s.f. Other rooms shall not be less than 70 s.f., except kitchens. Habitable rooms shall not be less than 7' in any horizontal dimension, except kitchens.

FIRE PREVENTION:

- Smoke alarms shall be in each bedroom, outside each separate sleeping area and at each level. They shall be interconnected and hardwired to the electric panel and have a battery backup.
- Carbon monoxide alarms are required for new construction and shall be located outside of sleeping areas when fuel-fired appliances are installed or the dwelling has an attached garage.
- Townhouses shall have a 2-hour party wall between units. No penetrations are allowed in that wall.
- Fire blocking shall be provided:
 - o Vertically at ceiling, floor levels in concealed spaces of stud walls and studded-off spaces at masonry and concrete walls.
 - o Horizontally at intervals not exceeding 10 feet.
 - o At all interconnections between concealed vert. and horiz. spaces, i.e., soffits, drop ceilings, and cove ceilings.
 - o At openings around vents, pipes, ducts, fireplaces, and chimneys at ceiling, floor levels with noncombustible material.
- Emergency Escape windows - A sill height of 44" maximum; a net clear opening of 5.7 SF minimum (5 SF at grade floor; a minimum clear height of 24" and clear width of 20" is required for habitual basement's and each bedroom.
- Window wells for emergency egress windows - minimum clear area 9 SF, minimum horizontal projection and width 36". Ladder or steps required for access out of well when well is deeper than 44". Fall protection shall be provided when depth of well exceeds 48".
- When a window opening is located more than 72" above finished grade, the lowest part of the clear opening shall be a minimum of 18" above the finished floor. Glazing between the floor and 18" shall be fixed or shall not pass a 4" sphere.
- Under stair accessible space shall have walls and soffits protected on the enclosed side with 1/2" gypsum board.

FRAMING CONSTRUCTION:

- Studs may be notched a maximum of 25% of the stud's depth for bearing walls, and 40% for nonbearing walls. The edge of the hole may be no closer than 5/8" to the edge of the stud.
- Notching and cutting of joists shall not exceed 1/6 of depth and shall not be located in the middle third of span. Notch depth at ends shall be a maximum of 25% of members' depth. Holes shall not be bored within 2" of top or bottom of joists; maximum diameter shall be 1/3 of the depth of the member.
- Splices in the top and bottom portion of the double top plate shall be staggered 4' minimum. Top plates may be notched a maximum of 50% of their width, but must be reinforced with 24 gauge steel angle, which spans to adjacent studs.
- Do not cut the top and bottom of manufactured floor joists.
- Floor framing beneath oversized bathtubs shall be doubled or shown to adequately support the additional loading.

MECHANICAL REQUIREMENTS:

- Door access to water heater and/or furnace shall be large enough to remove equipment and not less than 20" wide.
- Unobstructed working space not less than 30" wide.
- Combustion air required for fuel burning appliances - 50 cubic feet per 1,000 Btu/h. 2 permanent openings to adjacent spaces: one located within 12" of ceiling and one 12" from the floor. Each opening shall have free area equal to a minimum of 1 square inch per 1,000 Btu/h input rating of all appliances, but not less than 100 square inches. Combustion air cannot be received from bedrooms, bathrooms or toilet rooms. Unvented gas logs are not permitted in bedrooms.

ELECTRICAL REQUIREMENTS:

- Panel board clearances - 36" depth; 30" width - clear floor space.

- Outlets required within 6' each side of all doors and openings, and 12' thereafter. On any wall 2' long and longer.
- GFCI receptacles required. In bathrooms, counters, garages and unfinished areas.
- Combination type arc fault circuit interrupters are required on all bedroom branch circuits.
- At least one wall-switch-controlled lighting outlet for every habitable room, bathroom, and hallway.
- All stairs shall be provided with an artificial light source of at least 1 foot candle, which will fully illuminate all treads and landings
- Light activation - Controls for interior stairway lighting shall be accessible at the top and bottom of each stair without traversing any step of the stair.

PLUMBING REQUIREMENTS:

- Plumbing fixture clearances;
 - Lavatory - 21" in front
 - Water closet - 15" center to side
 - Water closet - 21" in front
 - Shower minimum size 30" x 30"
 - Shower - 24" in front of opening
- Showers and combination bathtub/shower valves shall be equipped with pressure balance, thermostatic mixing or combination pressure balance/ thermo-static mixing valves with high limit stops in accordance with ASSE 1016.

INSPECTION REQUIREMENTS

- Combined inspection for building and trade permits are required.
- County approved plat or grading plan, building plans and HVAC certification must be available on jobsite.

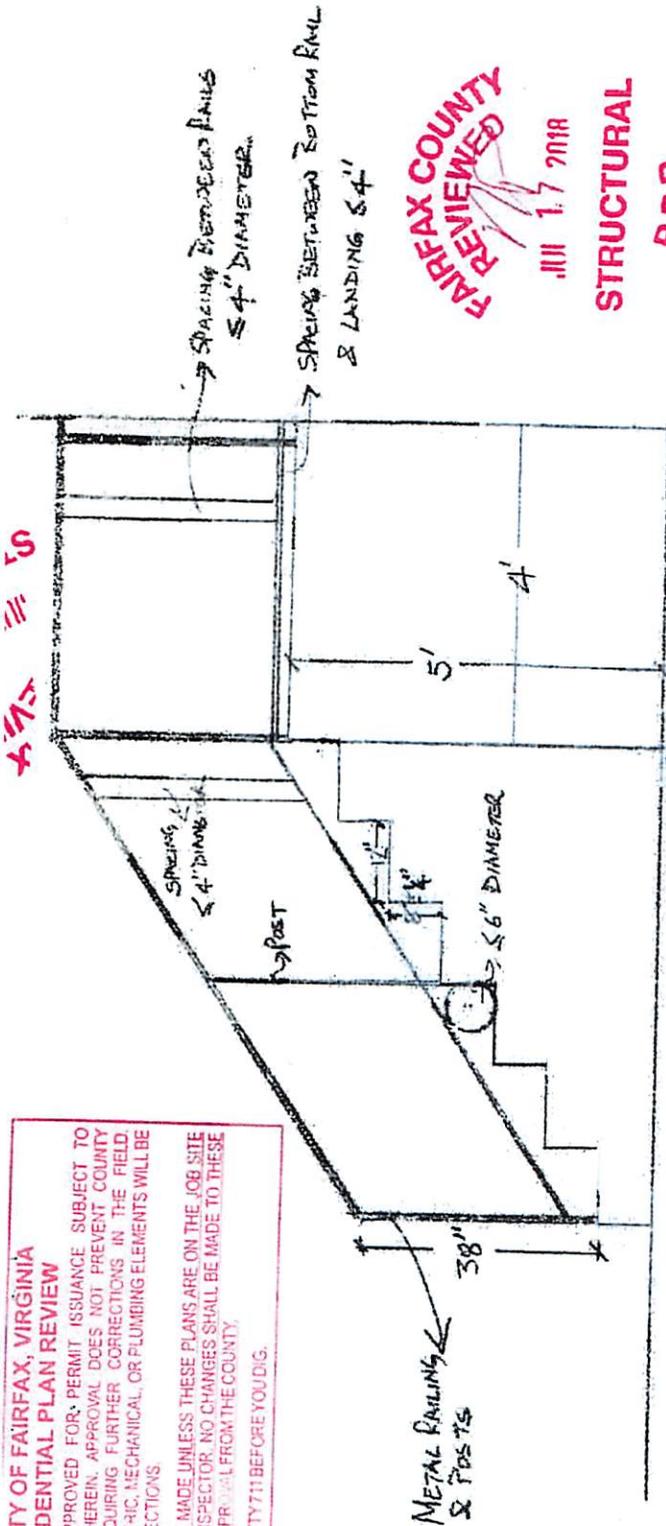
Schedule inspections:
www.fairfaxcounty.gov/fido

**COUNTY OF FAIRFAX, VIRGINIA
RESIDENTIAL PLAN REVIEW**

THESE PLANS ARE APPROVED FOR PERMIT ISSUANCE SUBJECT TO CORRECTIONS NOTED HEREIN. APPROVAL DOES NOT PREVENT COUNTY INSPECTORS FROM REQUIRING FURTHER CORRECTIONS IN THE FIELD. COMPLIANCE WITH ELECTRIC, MECHANICAL, OR PLUMBING ELEMENTS WILL BE EVALUATED DURING INSPECTIONS.

NO INSPECTIONS WILL BE MADE UNLESS THESE PLANS ARE ON THE JOB SITE AND AVAILABLE TO THE INSPECTOR. NO CHANGES SHALL BE MADE TO THESE PLANS WITHOUT PRIOR APPROVAL FROM THE COUNTY.

CALL MISS UTILITY AT 811, TTY 771 BEFORE YOU DIG.



FRONT STOOP & STEPS (MASONRY)

PROJECT 1: REPAIR FRONT MASONRY PORCH & RAILINGS. FAIRFAX COUNTY TYPICAL SEAS & RAIL DETAIL.

PROJECT 2: CLOSE TWO WINDOWS IN THE BACK SUNROOM (SUNROOM SIDING). NO STRUCTURAL WORK.

PROPERTY ADDRESS: 449 LAWYERS RD, VIENNA 22180
 DRAWN BY: AMIT JAIN / EAGLE PROPERTIES & INVESTMENTS
 445 WINDOVER AVE, VIENNA 22180
 SCALE: 1/2" = 1'

201802768
 9321
 AC Sanchez
 Date: 7/17/18



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Construction Code

DATE OF ISSUANCE: July 24, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover AV NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd., NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

The purpose of this letter is to rescind the Notice of Violation issued to Eagle Properties and Investments LLC, c/o Monika Jain, Registered Agent, dated July 2, 2018, and to reissue a new Notice of Violation regarding the violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition.

You were issued a Corrective Work Order on May 24, 2018 for violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition, effective July 14, 2014. Staff confirmed on July 19, 2018 that the violations remain to include the violations itemized below discovered on the July 19, 2018 inspection.

Explanation: On July 19, 2018, County staff investigated the above referenced premises and discovered that construction, alterations and installations have been performed without the issuance of the required permits, inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 2

Rear Addition-

A rear two (2) story addition has been constructed; the second level use as a bedroom with the means of egress via an exterior door, the room is without a Smoke Alarm, S/A. Electrical alterations and installations have been performed in this room.

NOTE: Access to the lower level of the structure not available at this time to determine the use of the lower level addition.

Kitchen-

The kitchen has been remodeled to include, but not limited to; a new gas stove replacement, electrical equipment and fixture installations; the counter top serving receptacle placement and spacing is non-code compliant.

Living Room-

New recess light fixture installations performed.

Rear Deck-

An exterior deck, approximately 16' wide, 24' long, 16" high has been constructed at the rear of the dwelling.

The permits required are, but not limited to, the following: Building, Electrical, Mechanical, Plumbing or Demolition.

NOTE: Miscellaneous Building Permit# 181980275, for the front porch repair and window alterations to the rear addition remains open.

Retaining Wall Permit# 041533354, issued 06/01/2004, to build a retaining wall per the Fairfax County Detail remains open without inspections.

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within 10 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Al Sanchez to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 3

- Contact me at (703)324-9321, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- **BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.**

Note:

***When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.**

**Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801**

***When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.**

***If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.**

You are directed to notify Al Sanchez by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-9321 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: Per Sect. 119 of the Virginia Construction Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 30 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
July 24, 2018
SR 149506
Page 4

Secretary to the Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703)324-5175, TTY 711

Information and forms can also be obtained at: <https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

Notice Issued By:



Signature
Al Sanchez
(703)324-9321

CC: Case File
Guy Tomberlin, Residential Inspections Branch Chief



**CHAP PETERSEN
& ASSOCIATES, PLC**

J. Chapman Petersen+*
Sharon Kim Petersen
David L. Amos
+Also admitted in DC
*Also admitted in MD

J. Chapman Petersen
jcp@petersenfirm.com
Direct Dial: 571-459-2510

August 2, 2018

Via First-Class Mail and E-Mail

Fairfax County Department of Code Compliance
c/o Al Sanchez, Investigating Officer
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Al.Sanchez@fairfaxcounty.gov

**Re: Notice of Violation – 449 Lawyers Rd., NW, Vienna, VA 22180
Case #: 201802768 SR#: 149506**

Dear Mr. Sanchez:

Please be advised that this firm represents Eagle Properties and Investments, LLC (“Eagle Properties”), which owns the property at 449 Lawyers Rd., NW, Vienna, VA 22180 (the “Property”) in the Town of Vienna.

We are in receipt of a Building Permit issued on July 17, 2018 and a Notice of Violation (“NOV”) issued on July 24, 2018 against Eagle Properties citing violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code, 2012 Edition (“USBC”). Please find the Building Permit and the Notice of Violation attached hereto respectively as Exhibit A and B.

On July 17, 2018, after the Building Permit was issued, an inspection was to occur by a county inspector. However, you have circumvented Virginia Code § 36-105 and the USBC by entering the Property on July 18, 2018 (along with a fire marshal) without informing my client and without his or the tenant’s permission. Neither Virginia law, Federal law or the USBC permits such warrantless searches. As a result of your reckless and wanton conduct, you have violated my client’s Fourth Amendment rights against unreasonable and warrantless searches of his property. Specifically, without an inspection warrant, as required by Virginia Code § 36-105(C)(3) and USBC, Part I, Section 104.1, and without my client or the tenant’s permission, you forced yourself into the Property. The result of your actions has resulted in the unlawful issuance of the NOV and a deprivation of my client’s constitutional rights.

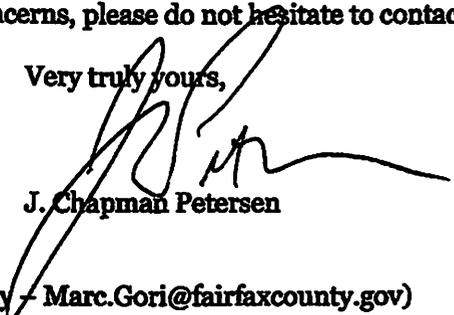
Letter to Al Sanchez
Page 2
August 2, 2018

Please be advised that a cause of action may be brought against a municipality under 42 U.S.C. § 1983 when “the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body’s officers.” *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). A government is liable if “under some official policy, [it] ‘causes’ an employee to violate another’s constitutional rights.” *Id.* at 692. “[I]t is when execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.” *Id.* at 694. Your actions have been reckless and in defiance of my client’s constitutional rights. Specifically, you were required to obtain an inspection warrant or my client’s consent prior to entering the Property on July 18, 2018. Rather than obtaining either of the aforesaid, you forced yourself into the Property, in violation of Virginia Code § 36-105(C)(3), USBC, Part I, Section 104.1 and my client’s Fourth Amendment rights. Further, you have harassed and intimidated my client’s tenant at the Property during your unlawful entrance – such conduct is also sanctionable at law.

Please be advised not to take any further action regarding this matter, as I will lodge an appeal to LBBCA on behalf of Eagle Properties regarding the NOV pursuant to Virginia Code 36-105(A) and USBC, Part I, Section 119. Any further action by you will be considered as retaliatory government action, which is prohibited by 42 U.S.C. 1983.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



J. Chapman Petersen

Cc: Client
Marc E. Gori, Esq. (by email only - Marc.Gori@fairfaxcounty.gov)



LAND DEVELOPMENT SERVICES

Fairfax County, Virginia

BUILDING PERMIT

MISCELLANEOUS BUILDING WK RES

Permit Number: 181980275

Issued Date: 07/17/2018

Tax Map ID: 038-1 / 06 / 0097

Job Address: 449 Lawyers Rd NW
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Plan No. : W-18-4391

Contractor:

OWNER IS CONTRACTOR

Owner/Tenant:

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Mechanic's Lien Agent:

Structure: SINGLE FAMILY DWELLING

Code: IRC 2012

Group: R5

Type of Construction: VB

Has permission, according to approved plans, applications and restrictions of record to:

PER CERC CASE 201802768: ALTERATIONS TO REPAIR FRONT CONCRETE STAIRS, PORCH AND INSTALL IRON RAILING PER PLAN. ALTERATIONS TO 2 STORY REAR ADDITION: REMOVE AND FRAME IN WINDOWS (NON STRUCTURAL).

BUILDING OFFICIAL *Brian J. Foley*

- A copy of this permit must be posted at the construction site for the duration of the permit.
- This permit does not constitute approval from your homeowners' association and its related covenants.
- This permit will expire if work does not commence in six months, or if work is suspended for six months.
- This permit holder is responsible to contact the county when stages of construction are reached that require inspections.
- To schedule inspections call our Inspection office at 703-631-5101, TTY 711 during business hours. Inspection may also be scheduled online at www.fairfaxcounty.gov/fido.
- For questions regarding this permit call the Permit Application Center at 703-222-0801, TTY 711.
- Call Miss Utility before you dig at 811.





County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION Virginia Construction Code

DATE OF ISSUANCE: July 24, 2018

METHOD OF SERVICE: OFFICE OF THE SHERIFF

LEGAL NOTICE ISSUED TO: Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent

ADDRESS: 445 Windover AV NW
Vienna, VA 22180

LOCATION OF VIOLATION: 449 Lawyers Rd., NW
Vienna, VA 22180

TAX MAP REF: 0381 06 0097

CASE #: 201802768 **SR#:** 149506

ISSUING INVESTIGATOR: Al Sanchez, (703)324-9321

The purpose of this letter is to rescind the Notice of Violation issued to Eagle Properties and Investments LLC, c/o Monika Jain, Registered Agent, dated July 2, 2018, and to reissue a new Notice of Violation regarding the violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition.

You were issued a Corrective Work Order on May 24, 2018 for violations of the Virginia Construction Code, Part I of the Virginia Uniform Statewide Building Code (USBC), 2012 Edition, effective July 14, 2014. Staff confirmed on July 19, 2018 that the violations remain to include the violations itemized below discovered on the July 19, 2018 inspection.

Explanation: On July 19, 2018, County staff investigated the above referenced premises and discovered that construction, alterations and installations have been performed without the issuance of the required permits, inspections, and approvals. The construction alterations and installations are, but not limited to, the following:

Department of Code Compliance
12055 Government Center Parkway, Suite 1016
Fairfax, Virginia 22035-5508
Phone 703-324-1300 Fax 703-653-9459 TTY 711
www.fairfaxcounty.gov/code



Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
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Rear Addition-

A rear two (2) story addition has been constructed; the second level use as a bedroom with the means of egress via an exterior door, the room is without a Smoke Alarm, S/A. Electrical alterations and installations have been performed in this room.

NOTE: Access to the lower level of the structure not available at this time to determine the use of the lower level addition.

Kitchen-

The kitchen has been remodeled to include, but not limited to; a new gas stove replacement, electrical equipment and fixture installations; the counter top serving receptacle placement and spacing is non-code compliant.

Living Room-

New recess light fixture installations performed.

Rear Deck-

An exterior deck, approximately 16' wide, 24' long, 16" high has been constructed at the rear of the dwelling.

The permits required are, but not limited to, the following: Building, Electrical, Mechanical, Plumbing or Demolition.

NOTE: Miscellaneous Building Permit# 181980275, for the front porch repair and window alterations to the rear addition remains open.

Retaining Wall Permit# 041533354, issued 06/01/2004, to build a retaining wall per the Fairfax County Detail remains open without inspections.

Order: Pursuant to the USBC, *Section(s) 108.1 When applications are required, Section 113.3 Minimum Inspections*, you are hereby directed to apply for and obtain the required permit(s), inspections, and approvals for the work described above or demolition of same at the above referenced address.

Apply for and obtain the necessary County permits for the work described herein within 10 calendar days from the date you receive this notice or obtain a County permit to demolish the work described herein within the same timeframe. No requirement to meet with DCC Investigator.

Contact Investigator Al Sanchez to schedule a pre-application meeting prior to the submission of permit application documents. This meeting is to ensure all cited violations are addressed in your permit application and/or construction documents. Your permit application will not be accepted by the Permit Application Center without this review from the Department of Code Compliance.

Eagle Properties and Investments LLC
c/o Monika Jain, Registered Agent
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- Contact me at (703)324-9321, TTY 711 within the timeframe established to confirm the violations(s) have been abated.
- **BRING THIS NOTICE WITH YOU TO THE PERMIT APPLICATION CENTER WHERE IT IS TO REMAIN AS PART OF YOUR CONSTRUCTION DOCUMENTS.**

Note:

***When work described above involves construction of an addition or an accessory structure, a certified plat must be submitted along with a building permit application to the Permit Application Center. This plat must indicate the location, dimensions, and height of all existing and proposed structures as well as indicated distance to the respective lot lines. This plat must be prepared, sealed and signed by a professional licensed with the state of Virginia to do so.**

**Permit Application Center
The Herrity Building
12055 Government Center Parkway, 2nd Floor
Fairfax, Virginia 22035
Telephone: 703-222-0801**

***When work described above involves the removal of unpermitted features (including appliances, cabinets, plumbing/gas fixtures) a demolition permit will be required. Be advised that any zoning ordinance violations contained in a separate Notice of Violation must also be corrected prior to or in conjunction with the issuance of a demolition permit.**

***If you have received a Zoning Notice of Violation, contact the investigator from the Department of Code Compliance at (703)324-1300 who issued the Notice before coming to the Permit Application Center in the Herrity Building to obtain your permit. When coming to obtain your permit, bring this notice with you.**

You are directed to notify Al Sanchez by return correspondence to 12055 Government Center Parkway, Suite 1016 Fairfax, VA 22035 or telephone call to (703)324-9321 within three (3) working days from the date you receive this Order.

RIGHT TO APPEAL THIS NOTICE: Per Sect. 119 of the Virginia Construction Code, any person aggrieved by the application of the code may appeal to the Local Board of Building Code Appeals (LBBCA), which is the Fairfax County Board of Building and Fire Prevention Code Appeals. The request for an appeal must be submitted in writing within 30 calendar days of receipt of the decision being appealed along with a \$208 fee. Failure to submit an application for appeal within the time limit established shall constitute acceptance of the Code Official's decision.

You may call the secretary of the LBBCA for more information about the appeals process, and/or appeal application forms:

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c/o Monika Jain, Registered Agent
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Secretary to the Fairfax County Local Board of Building Code Appeals
Attention:
Secretary to the Fairfax County Local Board of Building Code Appeals
Land Development Services
12055 Government Center Parkway, Suite 334
Fairfax, Va. 22035-5504
Telephone: (703)324-5175, TTY 711

Information and forms can also be obtained at: <https://www.fairfaxcounty.gov/landdevelopment/code-interpretations-modifications-and-appeals>.

Investigators may not accept any payments, including those associated with fines and fees.

If you have any questions, would like to schedule an appointment to meet with me, or to schedule a site visit, please contact me directly at (703)324-9321 or the main office at (703)324-1300.

Notice Issued By:



Signature
Al Sanchez
(703)324-9321

CC: Case File
Guy Tomberlin, Residential Inspections Branch Chief

REQUEST FOR INTERPRETATION

TO: OFFICE OF THE STATE BUILDING CODE TECHNICAL REVIEW BOARD
VIRGINIA DEPT. OF HOUSING AND COMMUNITY DEVELOPMENT
Main Street Centre
600 E. Main Street, Suite 300
Richmond, Virginia 23219-1321
Tel: (804) 371-7150 Fax: (804) 371-7092
Email: sbco@dhcd.virginia.gov

From: Jeff Brown, SBCO Director (DHCD Staff)

Phone Number : 804-371-7161

Email Address: jeff.brown@dhcd.virginia.gov

Applicable Code: 2015 Virginia USBC (also 2012 USBC)

Code Section(s): Section 102.3 Exemptions.

Submitted by (signature):  Date: April 30, 2019

QUESTION(S):

See attached.

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Introduction

Production of electricity at utility scale in Virginia has historically been through nuclear power plants. In recent years, other methods of production have become more common and large scale solar farms and wind farms are becoming more common throughout the state. These new facilities are sometimes under the control of a traditional “electric company”, but sometimes they are owned and operated by an entity, such as a private investment group, that is in the business of generating and wholesaling electricity through the bulk electric grid.

Section 102.3 of the 2015 USBC exempts certain electrical equipment, wiring, and the associated support structures that are associated with providing electric utility service. Over the years, the exemption has consistently been applied to traditional electrical generating plants owned and operated by the electric company, and the associated transmission lines, poles and towers, installed by and under the control of the power company, from each plant to each service connection. The introduction of solar and wind farms has raised questions throughout the state regarding how the USBC exemption should be applied to them, and has resulted in inconsistent interpretation and application of the USBC.

Background

At their March 15, 2019 meeting, the Review Board received and discussed a Request for Interpretation from Powhatan County related to the application of USBC Section 102.3 to certain solar farms. The Board decided not to provide an interpretation on Powhatan’s request due to some concerns related to that specific request. The Board did however agree that the general question of how Section 102.3 should be applied to electric generating facilities should be addressed. The Board discussed how the exemption should be applied and asked staff to draft a request and summary, based on their discussions, for consideration at a future meeting.

Clarifying that the exemptions, related to utility service, only apply to these types of companies will not only answer the questions related to solar electric generating facilities, but also provide guidance in applying the exemptions to other types of utility facilities.

Summary of discussions

The exemptions in USBC section 102.3, related to utilities, are intended to apply to what most have traditionally known as “Electric Companies” (Dominion Power, Appalachian Power, or local electric co-op, etc.), Natural Gas Companies (like Columbia Gas) and Water/Sewer Companies (like your local County or City Utilities). The Virginia State Corporation Commission (SCC) regulates these types of companies and lists them on their website:

http://www.scc.virginia.gov/pur/elec/reg_cos.aspx (See screenshot attached)

Additionally:

- Facilities that are being constructed for and will be under the control of an electric utility company are exempt from the USBC regardless of who is constructing them.
- Exempt facilities or equipment can be located on rights-of-way, land owned by the utility company, land leased by the utility company or other land where the utility company has rights of entry and occupancy.
- Facilities that are being constructed for or will be under the control of an entity that is not a SCC regulated utility company would not be exempt from the USBC.

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Questions for consideration

Question 1: Are equipment, wiring and support structures that will be under the control of an electric company exempt from the USBC?

Answer: Yes, as long as the equipment wiring or support structures in question are located on property for which the electric company has rights of occupancy and entry.

Q2: Are equipment, wiring and support structures that are under the control of an electric company, but are located on property that is leased, exempt from the USBC?

Answer: Yes, exempt equipment, wiring and support structures can be located within utility rights-of-way, land owned or leased by the electric company, or on property that the electric has rights of entry and occupancy.

Question 3: Are equipment, wiring or support structures that are installed by a contractor or an entity other than the electric company, but the electric company will control the equipment, wiring or support structures once they are installed and will have rights of occupancy and entry to the property, exempt from the USBC?

Answer: Yes, regardless of who installs wiring, equipment or support structures, if they will be controlled by the electric company upon completion, they are exempt from the USBC and permits are not required.

Question 4: Are equipment, wiring or support structures that are under the control of the electric company and the electric company maintains rights of occupancy and entry to the property, but the wiring, equipment or support structures are being maintained and operated by a contractor or an entity other than the electric company, exempt from the USBC?

Answer: Yes, if the electric company utilizes a 3rd party contractor to operate or maintain wiring, equipment or support structures, but the electric company maintains control, the wiring, equipment or support structures in question are exempt from the USBC.

Question 5: Are equipment, wiring and support structures that are under the control of an entity that is not an electric company exempt from the USBC?

Answer: No.

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Section 102.3 [2015 USBC]

102.3 Exemptions. The following are exempt from this code:

1. Equipment and wiring used for providing utility, communications, information, cable television, broadcast or radio service in accordance with all of the following conditions:
 - 1.1. The equipment and wiring are located on either rights-of-way or property for which the service provider has rights of occupancy and entry.
 - 1.2. Buildings housing exempt equipment and wiring shall be subject to the USBC.
 - 1.3. The equipment and wiring exempted by this section shall not create an unsafe condition prohibited by the USBC.
2. Support structures owned or controlled by a provider of publicly regulated utility service or its affiliates for the transmission and distribution of electric service in accordance with all of the following conditions:
 - 2.1. The support structures are located on either rights-of-way or property for which the service provider has rights of occupancy and entry.
 - 2.2. The support structures exempted by this section shall not create an unsafe condition prohibited by the USBC.
3. Direct burial poles used to support equipment or wiring providing communications, information or cable television services. The poles exempted by this section shall not create an unsafe condition prohibited by the USBC.
4. Electrical equipment, transmission equipment, and related wiring used for wireless transmission of radio, broadcast, telecommunications, or information service in accordance with all of the following conditions:
 - 4.1. Buildings housing exempt equipment and wiring and structures supporting exempt equipment and wiring shall be subject to the USBC.
 - 4.2. The equipment and wiring exempted by this section shall not create an unsafe condition prohibited by the USBC.
5. Manufacturing, processing, and product handling machines and equipment that do not produce or process hazardous materials regulated by this code, including those portions of conveyor systems used exclusively for the transport of associated materials or products, and all of the following service equipment:
 - 5.1. Electrical equipment connected after the last disconnecting means.
 - 5.2. Plumbing piping and equipment connected after the last shutoff valve or backflow device and before the equipment drain trap.
 - 5.3. Gas piping and equipment connected after the outlet shutoff valve. Manufacturing and processing machines that produce or process hazardous materials regulated by this code are only required to comply with the code provisions regulating the hazardous materials.
6. Parking lots and sidewalks, that are not part of an accessible route.
7. Nonmechanized playground or recreational equipment such as swing sets, sliding boards, climbing bars, jungle gyms, skateboard ramps, and similar equipment where no admission fee is charged for its use or for admittance to areas where the equipment is located.
8. Industrialized buildings subject to the Virginia Industrialized Building Safety Regulations (13VAC5-91) and manufactured homes subject to the Virginia Manufactured Home Safety Regulations (13VAC5-95); except as provided for in Section 427 and in the case of demolition of such industrialized buildings or manufactured homes.
9. Farm buildings and structures, except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in Section 35.1-1 of the Code of Virginia and licensed as such by the Virginia Board of Health pursuant to Chapter 2 (Section 35.1-11 et seq.) of Title 35.1 of the Code of Virginia. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.
10. Federally owned buildings and structures unless federal law specifically requires a permit from the locality. Underground storage tank installations, modifications and removals shall comply with this code in accordance with federal law.
11. Off-site manufactured intermodal freight containers, moving containers, and storage containers placed on site temporarily or permanently for use as a storage container.
12. Automotive lifts.

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SCC

Commonwealth of Virginia
State Corporation Commission

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Division of Public Utility Regulation

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Electric Companies Regulated by the SCC

The following is a list of investor-owned electric companies regulated by the SCC.

(Each of the links below is an external link. These sites are not maintained by the SCC and are provided as a convenience only.)

- [Appalachian Power Company](#)
- [Dominion Energy Virginia](#)
- [Kentucky Utilities](#) (serving Virginia as [Old Dominion Power](#))

The SCC also regulates electric cooperatives, which are owned by the members they serve.

(Each of the links below is an external link. These sites are not maintained by the SCC and are provided as a convenience only.)

- | | |
|---|--|
| A&N Electric Cooperative | Northern Virginia Electric Cooperative |
| B-A-R-C Electric Cooperative | Prince George Electric Cooperative |
| Central Virginia Electric Cooperative | Rappahannock Electric Cooperative |
| Community Electric Cooperative | Shenandoah Valley Electric Cooperative |
| Craig-Botetourt Electric Cooperative | Southside Electric Cooperative |
| Mecklenburg Electric Cooperative | Powell Valley Electric Cooperative |
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Need additional information? Contact sccinfo@scc.virginia.gov Website questions? Contact: webmaster@scc.virginia.gov

[Adobe Acrobat PDF Reader](#) [Microsoft Office Online Applications](#): (Excel, PowerPoint, Word)

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