

Virginia:

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

IN RE: Appeal of Richard Criqui  
Appeal No. 16-8

Hearing Date: February 17, 2017

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing & 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. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

In August of 2014, the Rockbridge County Building Department (local code office) issued a building permit, under the 2012 VCC, to Larry and Eileen Engle (Engle), a licensed Class A contractor, for the construction of a single-family dwelling on property they owned at 135 Ponds Drive in Lexington.

In May of 2015, the local code office issued a Certificate of Occupancy for the dwelling to Engle who then sold it to Richard and Elizabeth Criqui (Criqui). Two months later, Criqui took occupancy of the dwelling.

In June of 2016, Criqui noticed standing water in the crawl space and attributed it to seasonal and chronic groundwater, and storm water-related issues. As a result, Criqui asked the local code office to cite Engle for potential VCC violations concerning the construction of the home's footing and foundation.

In July of 2016, the local code office notified Criqui it would not issue a Notice of Violation because Engle had met the requirements of the "2012 International Residential Code with Virginia amendments."<sup>1</sup>

Subsequently, Criqui appealed the local code office's decision to the Rockbridge County Board of Building Code Appeals (local appeals board) which heard the appeal in September of 2016 and ruled to uphold the local code office's decision.

Criqui then further appealed to the Review Board and a hearing was held before the Review Board with Criqui; the Engles; and the County's building official and legal counsel, present.

<sup>1</sup> Excerpted from Rockbridge County letter dated July 19, 2016

Consequently, Review Board staff conducted an informal fact-finding conference for the appeal, prepared the record and scheduled a hearing before the Review Board. In February of 2017, a hearing before the Review Board was conducted with Criqui, the Engles and representatives of the local code office, in attendance.

### III. FINDINGS OF THE REVIEW BOARD

Criqui appeals the local code office's July 19, 2016 decision to not issue a Notice of Violation to Engle on the design and construction of Criqui's footing and foundation, and the local appeals board upholding of that determination. Subsequent to the testimony on the appeal, the Review Board identified the following five items for consideration:

1. Whether a violation of VCC § R401.3 (*Drainage*) exists relative to the exterior grading adjacent to the dwelling

Section R401.3 requires, in part, that lots be graded to drain surface water away from foundation walls and fall a minimum of 6 inches within the first 10 feet from foundation walls. On this issue, Criqui testified that Engle did not slope the finished grade around the home or the asphalt driveway away from the foundation, which he asserted contributed to the standing water in the crawl space. The local code office testified the slope of the exterior grading adjacent to the foundation passed final inspection. The office also testified that the asphalt driveway between

the house and the detached garage sloped the required minimum of 2.0 percent away from the building, as allowed in the exception to VCC § R401.3 for impervious surfaces. Engle agreed with the facts on this issue as presented by the local code office.

On this matter, the Review Board finds that while there is disagreement between Criqui and Engle about subsequent grading around the foundation, the photographic evidence submitted by Criqui shows that the impervious surface (i.e. the asphalt driveway) abutting the foundation, does not, in fact, slope away from the foundation a minimum of 2.0 percent within the first ten feet of the building, a violation of VCC § R401.3.

2. Whether a violation of VCC § 405.1 (Concrete or masonry foundations) exists relative to the dwelling's drainage system

During their testimony, all parties conceded that a perimeter drain was installed below grade around the dwelling's foundation; however, Criqui alleged a potential code violation of VCC § R405.1 exists concerning its installation. His assertion was derived from concern about the standing water in the crawl space of the dwelling. While photographs submitted by Criqui show areas of standing water in the crawl space, no evidence was provided proving it was caused by the improper installation of the dwelling's drainage system. During testimony, both Engle and the County code office contended that the drains were installed in accordance with VCC § R405.1. Consequently, the Review Board finds that no violation of VCC §

R405.1 exists in this situation.

3. Whether a violation of VCC § R408.6 (*Finished grade*) exists relative to the height of the under-floor space

This issue concerns the finished grade of the under-floor surface and its height relative to the outside finished grade. During testimony, all parties conceded that the finished grade of the under-floor surface was lower than the outside grade.

Section R408.6 requires that the finished grade of under-floor surfaces be as high as the outside finished grade, where surface water does not readily drain from the building site, unless an approved drainage system is provided. From the photos submitted, the Review Board finds that the standing water in the crawl space clearly shows that the surface water does not readily drain from the building site; and since there was no evidence provided which indicated that an approved drainage system was installed in the foundation walls to remedy the condition, the Review Board finds that a violation of VCC § 408.6 does exist.

4. Whether a violation of VCC § R401.4 (*Soil tests*) exists relative to soil testing methodologies.

During testimony, Criqui alleged that the County's Soil Policy was deficient and inconsistent with the spirit and intent of the VCC. Despite his contention, the Chairman explained to the parties that the Review Board does not have jurisdiction over local government policies, in this case, a local soil policy. In this matter, the Review Board finds that VCC § R401.4 explicitly assigns responsibility for

determining whether to require a soil test for a given property to the local building official. As a result, the Review Board finds that no violation of VCC § 401.4 exists.

5. Whether a violation of VCC § R403.1.8 (*Foundations on expansive soils*) exists relative to the classification of soil below the dwelling.

During testimony, Criqui referenced a geotechnical soil report from ECS in the Review Board's agenda package proved that expansive soils do exist on the property.

In this matter, the Review Board finds that although the local code office did not have the benefit of a geotechnical soil report when determining whether Criqui's property had expansive soils during the permitting process, the December 14, 2016 ECS report in the Review Board's agenda package shows the presence of expansive soils on Criqui's property. In fact, the handauger borings in the report indicate expansive soil conditions in the crawl space. The applicable code section, VCC §R403.8.1, states in its entirety:

*"Foundation and floor slab for buildings located on expansive soils shall be designed in accordance with Section 1808.6 of the International Building Code."*

As a result, the Review Board finds that the local code office, upon learning of the existence of expansive soils below Criqui's home, should have cited Engle for a violation of VCC § R403.8.1 because the original design and construction of the home's footing and foundation did not take into consideration the soil characteristics of the property.

6. Whether a violation of VCC § R406 (*Foundation Waterproofing and Dampproofing*) exists relative to waterproofing on the dwelling.

This issue pertains to whether waterproofing was installed around the exterior of the home's foundation wall. During testimony, the County building department referenced the home's inspection history in the Review Board's Agenda Package showing an approved draintile inspection in September of 2014 which noted "8" cmu foundation walls parged and blackcat to projected grade."

In this matter, the Review Board finds that because the County building department's testimony demonstrated the existence of waterpproofing on the home, and because there was no evidence submitted to the contrary, no violation of VCC § R406 exists.

7. Whether a violation of VCC § R102.1 (*Purpose*) exists relative to the standing water in the crawl space

This issue concerns whether the intermittent presence of standing water in the home's crawl space represents a violation of VCC § R102.1, which reads in pertinent part:

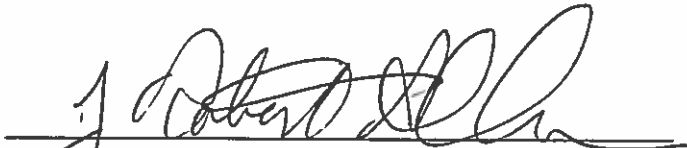
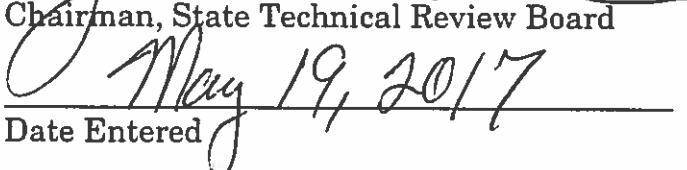
*"102.1 Purpose. In accordance with Section 36-99 of the Code of Virginia, the purpose of the USBC is to protect the health, safety and welfare of the residents of the Commonwealth of Virginia, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier free*

*provisions for the physically handicapped and aged."*

On this matter, the Review Board finds that the presence of standing water in the home's crawl space does constitute a violation of VCC § R102.1 as it relates specifically to the code violations identified in Items #1,#,3 and #5, which, by their very nature, are contrary to the intended purpose of the VCC.

#### IV. FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board orders the decision of the County building department, and the City appeals board upholding of that decision to be, and hereby is, overturned, with respect to Items #1, #3, #5, and #7 and requires the local code office to issue Notices of Violation to Engle relative to those items. The Review Board also orders the decision of the County building department, and the City appeals board to be, and hereby is, upheld with respect to Items #2, #4, and #6.

  
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Chairman, State Technical Review Board  
  
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Date Entered

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 Alan W.McMahan, 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.