

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Park Crescent Owners LLC and Croatan Investments, LLC  
Appeal No. 22-14

DECISION OF THE REVIEW BOARD

I. Procedural Background

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

II. Case History

In a letter dated March 25, 2022 the City of Norfolk Department of Planning: Division of Building Safety (City), the agency responsible for the enforcement of the 2015 and 2018 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), denied a plan review submittal for the permanent removal of the existing elevators in each of the 14 three story apartment buildings, located at 6400-6491 Crescent Way in the City of Norfolk, owned by Park Crescent Owners LLC and Croatan Investments, LLC (Park Crescent) citing the following violations of the 2015 and 2018 Virginia Existing Building Code (VEBC):

- a. VEBC Section 404.1 – Alterations shall not reduce or have the effect of reducing accessibility of a facility or portion of a facility.
- b. VEBC 102 – Your submitted building code path had not sufficiently been documents or prove that the VEBC will allow the elevators to be removed.
- c. VEBC Sections 103.1, 103.4, and 103.4.1 – these sections do not apply to this code application

Vincent Mastracco, legal counsel for Park Crescent, filed an appeal to the City of Norfolk Local Board of Appeals (local appeals board) which was denied on May 11, 2022. Park Crescent further appealed to the Review Board on October 16, 2022.

Appearing at the Review Board meeting for Park Crescent were Jamie Skinner, Raquan Hall, and Vincent Mastracco, legal counsel. Appearing at the Review Board meeting for the City were Phillip Williams, Phillip Winslow, and John Culpepper.

### III. Findings of the Review Board

#### A. Whether to uphold the building official and local appeals board that the existing inoperable elevators could not be decommissioned and/or removed.

Park Crescent, through its agent and legal counsel, argued that the removal of the existing inoperable elevators in each of the 14 three story buildings in the Park Crescent Apartments would not decrease accessibility or accessible means of egress. Park Crescent further argued that the existing elevators did not meet the requirement in the building code to be considered accessible elevators; therefore, were not a part of the accessible means of egress for the buildings. Park Crescent also argued that in their proposed plan the existing accessible features and accessible means of egress of the buildings would not decrease; rather, would increase by adding one more accessible means of egress to each of the buildings allowing the buildings to exceed the current buildings code requirements for means of egress. Park Crescent also argued that requiring the existing elevators to be accessible elevators would impose stricter requirements on the existing buildings than would be required if newly constructed under the current VCC which is prohibited in the Virginia Existing Building Code (VEBC). Lastly, Park Crescent argued that the existing buildings would have been code compliant without elevators when originally constructed and that the buildings would be code compliant if they were constructed without elevators under the 2018 VCC.

The City argued that the removal of the existing inoperable elevators would reduce the level of accessibility of the 14 three story buildings in the Park Crescent Apartments; thus, were required to be repaired or replaced. The City further argued that the removal of the existing elevators would eliminate the availability of the Type B units on the upper floors. The City in its arguments stated it was not disputing the fact that the existing buildings could have been originally constructed without elevators and would have been code compliant; furthermore, the City stated it was also not disputing the fact that if the buildings were constructed under the current VCC without elevators that the buildings would be code compliant.

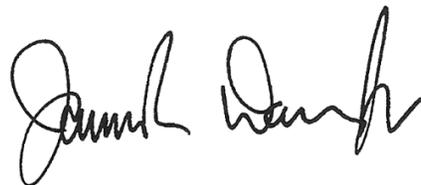
The Review Board finds that the City needs to consider the additional information proposed by the engineer for the property owner at the meeting, which was not allowed for submittal and distribution by the Chair, and issue a new decision.

#### IV. Final Order

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

- A. Whether to uphold the building official and local appeals board that the existing inoperable elevators could not be decommissioned and/or removed.

Without having reached the merits of the decision of the city and local appeals board, the appeal is remanded back to the local appeals board for consideration of the additional information proposed by the engineer for the property owner at the meeting and issuance of a new decision.



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Chair, State Building Code Technical Review Board

Date entered \_\_\_\_\_ March 17, 2023 \_\_\_\_\_

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.