

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Fairfax County
Appeal No. 22-16

DECISION OF THE REVIEW BOARD

I. Procedural Background

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

II. Case History

On July 14th and 15th of 2021 the Fairfax County Department of Code Compliance (County), the agency responsible for the enforcement of the 1970 Building Officials and Code Administrators (BOCA) Basic Building Code, 1972 BOCA Basic Building Code Accumulative Supplement, 1975 BOCA Basic Building Code, 1971 One and Two Family Dwelling Code, 1975 One and Two Family Dwelling Code, 1972 BOCA Mechanical Code, 1975 BOCA Mechanical Code, 1975 BOCA Plumbing Code, and 2018 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), performed inspections for the residential structure, located at 244 Old Court House Road NE, in the town of Vienna in Fairfax County, owned by Barrett Kashdan (Kashdan). As a result of the inspections a Corrective Work Order (CWO) was issued on August 3, 2021 citing violations of VCC Sections 108.1 and 113.3 related to the following:

- a. Construction of a one story attached addition with a front porch, rear deck with stairs, and an attached storage shed. The addition is comprised of a

full kitchen, full bathroom, living area, and bedroom. The addition has no access to the main dwelling and electric service is supplied by a sub panel in the kitchen.

- b. Replacement of the service panel. The replacement of the panel was permitted under electrical permit #70120145 but never finalized and has since expired.
- c. Replacement of the gas water heater and gas furnace in the main dwelling.

On December 7, 2021 the County confirmed the above listed issues resulting in the cited violations to VCC Section 108.1 and 113.3 still existed and subsequently issued a Notice of Violation (NOV) on December 8, 2021.

David Whitting, legal counsel at that time for Kashdan, filed an appeal to the Fairfax County Board of Building Code Appeals (local appeals board) which was upheld on September 14, 2022. The County further appealed to the Review Board on October 4, 2022.

Appearing at the Review Board meeting for Fairfax County were Austin Sanchez and Patrick Foltz. Barrett Kashdan was properly noticed of the hearing; however, did not attend. Additionally, Geoffrey Kashdan, brother and Power of Attorney for Kashdan, who provided staff with a copy of the POA, indicated both verbally during a telephone conversation with staff and in an email dated May 11, 2023 that neither he nor Kashdan would be attending the hearing. Furthermore, Geoffrey waived Kashdan's right to attend/appear and agreed to accept the decision of the Review Board.

III. Findings of the Review Board

A. Whether to overturn the building official and uphold the local appeals board that violations of VCC Sections 108.1 and 113.3 do not exist because the records associated with construction, permitting, and inspections on the subject property, originally constructed in 1960 and then modified prior to 1988 (when the current owner purchased the property) to convert a carport/garage to an enclosed living space are not available to determine the acceptability of the property to the codes in effect during that period. In addition, the prior use of that living space as

a separate dwelling unit, which was the basis for a complaint to the County, has been terminated. In upholding the appeal, it was noted that the Notice of Violation also included the lack of a final inspection and approval of an electrical panel and replacement gas furnace and water heater in the subject property, which are separate issues but were combined with the enclosed living space issue.

The County argued that a carport was constructed between 1972 and 1976 without the required permits and inspections. The County argued that no record of permits for the carport exist. The County further argued that the 1970 BOCA Basic Building Code was in effect in Fairfax County during that time as that code was adopted on August 4, 1971 and the Virginia code amendments, as stated on the Department of Housing and Community Development (DHCD) website, were adopted on April 1, 1973. The County further argued that pursuant to those codes an application was required involving a fee. The County also argued that sometime later the carport was converted to habitable space and interior renovations were also performed to the main dwelling which created a separate dwelling unit. Lastly, the County argued that Kashdan had installed an electrical panel and removed and installed new gas appliances in the main dwelling without the required permits and inspections.

The Review Board found that a carport had been constructed between 1972 and 1976 based on aerial photographs provided in the record and testimony that no record of the required permits existed in the county database. The Review Board further found that the removal and installation of new gas appliances in the main dwelling occurred without the required permits.

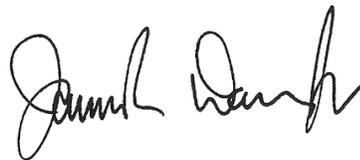
IV. Final Order

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

A. Whether to overturn the building official and uphold the local appeals board that violations of VCC Sections 108.1 and 113.3 do not exist because the records associated with

construction, permitting, and inspections on the subject property, originally constructed in 1960 and then modified prior to 1988 (when the current owner purchased the property) to convert a carport/garage to an enclosed living space are not available to determine the acceptability of the property to the codes in effect during that period. In addition, the prior use of that living space as a separate dwelling unit, which was the basis for a complaint to the County, has been terminated. In upholding the appeal, it was noted that the Notice of Violation also included the lack of a final inspection and approval of an electrical panel and replacement gas furnace and water heater in the subject property, which are separate issues but were combined with the enclosed living space issue.

The decision of the County is upheld and the decision of the local appeals board is overturned because the carport was constructed between 1972 and 1976 based on aerial photographs provided in the record and testimony that no record of the required permits existed in the county database, and that the removal and installation of gas appliances in the main dwelling occurred without the required permits.



Chair, State Building Code Technical Review Board

Date entered ____ July 21, 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.