

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

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

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 9, 2018, the County of Henrico Building Inspections Department (County), in enforcement of the 2012 Virginia Property Maintenance Code (VMC), issued a notice of violation to AML LLC for rental property located at 2112 Oakwood Lane. The notice outlined three VMC violations related to the lack of water service at the home.

Mr. Morrissey, agent for AMcL, LLC (AMcL) filed an appeal to the County of Henrico Local Board of Appeals (local appeals board) on July 12, 2018. The local appeals board conducted a hearing in August of 2018 and upheld the decision of the County. AMcL filed an application for appeal to the Review Board on August 20, 2018 after receipt of the local board's decision. The County rescinded the notice of violation on October 4, 2018.

A Review Board hearing was held on February 15, 2019. Appearing at the Review Board hearing for the Henrico County were John Butler, Greg Revels and John Gilbody, legal counsel. Michael Morrissey and Ronald Ame, attended on behalf of the AMcL, LLC.

Findings of the Review Board

- A. Whether or not to dismiss the appeal as not properly before the Board since the County rescinded the notice of violation, based on previous rulings of the Review Board which hold that no right of appeal exists where a NOV has been resolved.¹

AMcL argued that the County had not filed a motion to dismiss the case as moot. AMcL further argued that the mere rescinding of the NOV did not render the appeal moot. The County argued that it had not filed a motion to dismiss because the issues for resolution indicated in the staff summary stated that the properness of the appeal before the Board based on the fact that the NOV had been rescinded would be the first issue addressed by the Review Board. The County stated that the rescinding of the NOV did not seem to be in dispute by AMcL. AMcL did not dispute the assertion.

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

107.5 Right of appeal; filing of appeal application. *Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA.*

The Maintenance 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

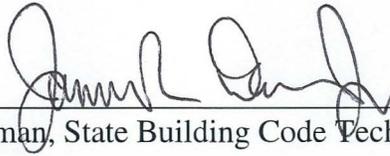
¹ See Review Board Case No. 03-3 and 17-9. See also Review Board Case Nos. 98-8, 98-16, 00-2, 00-14, 11-9&10, and 16-6.

code.² In other words, without applications of the code or being aggrieved by applications of the code, there is no right to appeal.

When the building official rescinded the NOV, which is the application of the code, he removed the application of the code. The removal of the application also ended whatever aggrievement there was against AMcL. Therefore, without the NOV there is no right to appeal. The Review Board finds that by rescinding the NOV, the County rescinded the cited violation and application of the code. So, AMcL no longer has a right to appeal in this case.

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: March 15, 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.

² *Id.*