

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Karen Lindsey
Appeal No. 19-02

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 January 25, 2018, the home owned by William and Marjorie Lindsey, located at 2445 Strawberry Lane in the City of Chesapeake, caught fire. Karen Lindsey (Lindsey), daughter to the deceased owners and current resident of the property along with her two children, were displaced due to the extensive damage to the home. In February of 2018 Lindsey was certified as the Executor of the estate for the property.

On January 29, 2018, the City, in enforcement of the 2012 Virginia Property Maintenance (VMC), performed an inspection of the property. In early March of 2018 copies of the Notice of Unsafe Structure (Demolition), Demolition Authorization Form, City of Chesapeake Board of Building Code Appeals (local appeals board) application, Notice of Violation (NOV), Public Notice, and Building Inspection Report for Unsafe Structure dated March 7, 2018 were stapled to the garage of the structure. Lindsey removed them from the structure and contacted the City for

clarification of the documents. On March 29, 2018, Lindsey received copies of the above referenced documents along with an amended Building Inspection Report for Unsafe Structure dated March 26, 2018 via USPS certified mail. The same documents were posted on the structure by the City Sheriff's Department on March 30, 2018. Lindsey, appealed the enforcement action by the City of Chesapeake, Development and Permits Department (City) under Part III of the Uniform Statewide Building Code (Virginia Maintenance Code).

The local appeals board heard Lindsey's appeal on May 16, 2018 and ruled to uphold the decision of the City. In addition to upholding the decision of the City, the local appeals board gave Lindsey 30 days from the date of the hearing to obtain an engineer's report and contractor's agreement; 60 days to acquire the needed permits and 180 days to complete all repairs, request the required inspections and obtain a new Certificate of Occupancy (CO); and 270 days to obtain the new CO or have the property demolished. The local appeals board further stated that if the deadlines provided were not adhered to the City would demolish the structure without further notice. Lindsey agreed with the cited violations; however, she found the timeline unattainable and asked for an extension of the timeframes provided by the local appeals board; therefore, Lindsey further appealed to the Review Board.

A Review Board hearing was held on February 15, 2019. The Review Board did not agree with the City that the local appeals board resolution was adequate. The Review Board found the local appeals board resolution did not provide the required language in accordance with the VMC Section 106.7 which reads:

“Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified

mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150.”

The Review Board further found that the information provided to Lindsey was outdated and referenced Review Board staff that retired nearly a year ago. The Review Board remanded the appeal to the local appeals board to re-issue its decision in a manner and form that complied with the 2012 VMC Section 106.7 because the prior resolution did not comply.

The local appeals board conducted a second hearing on April 17, 2019. The local appeals board again upheld the NOV issued by the City. In addition to upholding the NOV the local appeals board gave Lindsey 30 days from the date of the hearing, April 17, 2019, to obtain an engineer’s report and contractor’s agreement; 60 days to acquire the needed permits and 180 days to complete all repairs, request the required inspections and obtain a new Certificate of Occupancy; and 270 to obtain the new CO or have the property demolished. The local appeals board again further stated that if the deadlines provided were not adhered to the City would demolish the structure without further notice. Lindsey received a copy of the local board decision on May 13, 2019. Lindsey again agreed with the cited violations; however, she found the timeline unattainable and asked for an extension of the timeframes provided by the local appeals board. Lindsey further appealed to the Review Board on June 3, 2019.

A Review Board hearing was held on September 20, 2019. Appearing at the Review Board hearing for the City of Chesapeake were John King and Meredith Jacobi, legal counsel. Karen Lindsey and her two children, Alexis Lindsey and Pepper Wilson, attended on behalf of the Lindseys; however, arrived approximately 30 minutes into the hearing.

Findings of the Review Board

A. Whether the appeal was timely to the Review Board.

Neither the City, nor Lindsey, objected to the timeliness of the appeal. The Review Board finds the appeal to be timely because the relief sought was in the original appeal.

B. Whether to overturn the decision of the City and the local appeals board that in accordance with VMC Section 105 (Unsafe structures or structures unfit of human occupancy) the structure is unsafe.

Lindsey argued that the process the City followed was unfair to her family who was displaced from their home by a fire. Lindsey further argued that the timeline provided by the City was unattainable and requested additional time to comply as she wanted to rebuild her home.

The City argued that Lindsey had ample time, 20 months since the structure burned, to begin working on the structure; however, there had been no indication that there had been any progress to make any repairs to the structure. The City further argued that, no plans, engineer's report, or contractor's statement had been submitted and no permits had been applied for or issued. The City also argued that the structure remained unsafe, open to the elements, and continues to deteriorate. The City also argued that it continues to receive complaints from the neighbors related to the unsafe structure which is an attractive nuisance, fire hazard, and has a negative affect the surrounding property values.

Lindsey argued that she had not moved forward with the process of making repairs due her fear that the City would demolish her home, even if she had begun the process of rebuilding, without further notice. Lindsey also expressed disbelief in the claims by the City that complaints are being filed by the neighbors related to the structure.

The Review Board agrees with the City that a violation of VMC Section 105 exists; however, finds that additional time is needed for Lindsey to comply; therefore, the Review Board

provides the following amendments to the timeframes to begin after the adoption of the Review Board final order:

- 90 days to submit the engineer's report and repair plans
- After the initial 90-day period to submit the engineer's report and repair plans, then an additional 120 days to obtain the permit and plan approval
- After that 120-day period to obtain the permit and plan approval; then an additional 270 days to obtain the certificate of occupancy

Final Order

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

A. Whether the appeal was timely to the Review Board.

The decision of the local appeals board and the City is upheld and the appeal is timely.

B. Whether to overturn the decision of the City and the local appeals board that in accordance with VMC Section 105 (Unsafe structures or structures unfit of human occupancy) the structure is unsafe.

The decision of the local appeals board and the City that a violation of Section 105 is upheld with the amendments to the timeframes set forth in this order from the adoption of the Review Board final order.



Chairman, State Building Code Technical Review Board

Date entered: _____November 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.