

VIRGINIA:

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

IN RE: Karen Hobbs
Appeal No. 18-21

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

Karen M. Hobbs (Hobbs) owner of the property located at 11812 Breton Court, Unit 2 in Fairfax County, appealed the enforcement action by the County of Fairfax Department of Code Compliance (County) under Part III of the Uniform Statewide Building Code (Virginia Property Maintenance Code or VMC).

In October of 2018, the County, in enforcement of the Virginia Property Maintenance Code, issued a notice of violation to Ms. Hobbs for her property located at 11812 Breton Court, Unit 2. The notice cited three VMC violations, one violation each for Sections 305.1 (General), 308.1 (Accumulation of rubbish and garbage), and 702.1 (General). The County also issued a Notice of Structure Unfit of Human Occupancy in accordance with VMC Section 202 (Definition).

The local appeals board heard Ms. Hobbs' appeal on October 22, 2018 and ruled to uphold the decision of the County. Ms. Hobbs then further appealed to the Review Board on December 5, 2018 after receipt of the local board's decision.

Findings of the Review Board

A. Whether the County made a reasonable effort to obtain consent to enter the property for an inspection.

Douglas Crockett, legal counsel for Ms. Hobbs, argued that Ms. Hobbs did not provide consent to the County to enter her property. Mr. Crockett argued that the County had approximately four to six employees present for the inspection which lasted over four hours. Mr. Crockett further argued that the building manager and a locksmith were also present at the time of the inspection and that they threatened entry to Ms. Hobbs property. Mr. Crockett also argued that the presence of so many individuals at the property coupled with the actions of those individuals constituted coercion, intrusive conduct, and undue influence which put Ms. Hobbs under duress; therefore, her consent was not voluntary.

Fairfax County, through legal counsel, argued that Ms. Hobbs did in fact provide consent to enter the property the following day at 9:00 a. m. and placed restrictions on that consent; the inspection was not to include the bedrooms and bathrooms. The County, through testimony of Ms. Lunsford, clarified that the locksmith was contacted by the property manager, not the County, and that the threat of entry was not made by the County, but rather by the property manager through his authority. The Review Board finds that the County did make every reasonable effort to obtain consent and did in fact gain that consent as Ms. Hobbs had ample time to change her mind; however, she did not.

B. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 305.1 (General) exists.

Mr. Crockett argued that unsanitary conditions do not exist within the structure; therefore, the cited violations did not exist. Mr. Crockett further argued that the items identified by the County as feces and urine on the floor of the structure was likely shredded cardboard.

Fairfax County argued that the conditions in the structure were unsanitary as there was a strong ammonia odor, commonly associated with animal urine, that could be detected in the parking lot and became more and more intense the closer you got to Ms. Hobbs' structure. The County further argued that upon entry, the ammonia odor in the structure was so overwhelming that the inspectors had a hard time breathing and their eyes began to water. The County argued that animal feces and urine were present on the floor. The County also argued that there was rotting food in the kitchen area where the presence of flies was noted. Lastly, the County argued that flies were swarming around the entry door to the structure. Based on the testimony of the County, the Review Board finds that violations of VMC Section 305.1 (General) exist due to the presence of animal urine and the strong smell of ammonia, commonly associated with animal urine, apparent from the parking lot coupled with the other conditions found within the structure.

C. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 308.1 (Accumulation of rubbish and garbage) exists.

Mr. Crockett argued that the cited violations do not exist. Mr. Crockett further argued that the boxes referred to by the County were Ms. Hobbs' personal belongings, files, and other pertinent documents. Mr. Crockett further argued that Ms. Hobbs only used the dining room for storage.

Fairfax County argued that there was an excessive amount of cardboard boxes, papers, and other flammable material throughout the structure. The County further argued that such boxes were stacked to the ceiling in some areas. The County again argued that there was rotting food in the kitchen area. The Review Board finds that violations of VMC Section 308.1 (Accumulation of rubbish and garbage) exist based on the abundance of boxes and other flammable material found throughout the structure as well as the rotting food found in the kitchen area.

D. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 702.1 (General) exists.

Mr. Crockett argued that the cited violations do not exist. Mr. Crockett argued that the inspection took place in the middle of Ms. Hobbs cleaning her structure whereby she was preparing to get rid of a few items such as the large couch in the middle of the living room. Mr. Crockett further argued that the shampooer, vacuum, brooms, etc. found in the hallway were there temporarily and were not typically stored in the hallway. Mr. Crockett also argued that Ms. Hobbs was in the midst of cleaning and working on her refrigerator and dishwasher so they were moved away from the wall; the moving of these appliances required Ms. Hobbs to move everything on her counters so now those items were also out of place.

Fairfax County argued that the hallway was impassable and the dining room was totally inaccessible. The County further argued that in several areas of the structure the inspector had to turn sideways to maneuver through the stacks of boxes and furniture. The Review Board finds that violations of VMC Section 702.1 (General) do not exist because the inspectors reasoning for citing this was related to the sliding rear door of the structure which is not a part of the means of egress.

E. Whether to overturn the decision of the County and the local board that in accordance with VMC Section 202 (Definition) the structure is unfit for human occupancy.¹.

Mr. Crockett argued that the determination of the structure to be unfit for human occupancy based on the cited violations was excessive. Mr. Crockett further argued that Ms. Hobbs had not made any substantial changes to the appearance of the structure since the original inspection by the County, rather she had simply performed routine cleaning of the structure.

Fairfax County argued that based on the entirety of the cited violations the structure was unfit for human occupancy. The County further argued that during the subsequent inspection after 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.

local board hearing Ms. Hobbs had made substantial progress in abating the cited violations therefore, the property was no longer unfit for human occupancy and removed the placard and allowed Ms. Hobbs to return to the property.

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

After the local board hearing Ms. Hobbs allowed the County to re-inspect the property. During the inspection the County determined substantial progress in abating the cited violations had been made; therefore, the property was no longer unfit for human occupancy. The County removed the placard and allowed Ms. Hobbs to return to the property; therefore, the application of the code was also removed. The removal of the application ended whatever aggrievement there was against Ms. Hobbs. Therefore, without the cited violation there is no right to appeal. The Review Board finds that Ms. Hobbs' partial compliance with the NOV and subsequent determination by the County of the structure as no longer unfit for human occupancy, the County rescinded the cited violation and application of the code. So, Ms. Hobbs no longer has a right to appeal the cited violation.

² *Id.*

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 County made a reasonable effort to obtain consent to enter the property for an inspection.

The decision of the local appeals board that the County made a reasonable effort to obtain consent to enter the property for inspection and did in fact gain that consent and is upheld.

- B. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 305.1 (General) exists.

The decision of County and the local appeals board that a violation of Section 305.1 exists and is upheld.

- C. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 308.1 (Accumulation of rubbish and garbage) exists.

The decision of County and the local appeals board that a violation of Section 308.1 exists and is upheld.

- D. Whether to overturn the decision of the County and the local board that a violation of the VMC Section 702.1 (General) exists.

The decision of County and the local appeals board that a violation of Section 702.1 exists and is overturned.

- E. Whether to overturn the decision of the County and the local board that in accordance with VMC Section 202 (Definition) the structure is unfit for human occupancy.

The Review Board concluded that this cited violation had already been rescinded prior to the Review Board hearing; therefore, no right of appeal exists.


Chairman, State Building Code Technical Review Board
Pro Tem

Date entered: July 19, 2019

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.