

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD  
(For Determination of Timeliness)

IN RE: Appeal of Joshua and Makiba Gaines  
Appeal No. 17-11

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

Joshua and Makiba Gaines, a married couple who own rental property in the City of Norfolk, appeal action by the City taken against them under Part III of the Virginia Uniform Statewide Building Code, the Virginia Maintenance Code, or VMC.

In February of 2017, the City issued a notice of violation under the VMC, listing a number of violations concerning the Gaines' rental house located at 2410 West Avenue.

Later in February, the City issued an additional notice of violation identifying the property as unsafe or unfit for human habitation.

In March of 2017, the Gaines filed an appeal to the City of Norfolk Local Board of Building Code Appeals (City Appeals Board). The City Appeals Board heard the Gaines' appeal on June 28, 2017 and ruled to dismiss the appeal as untimely.

The Gaines then furthered appealed to the Review Board. Review Board staff met with the parties for an informal fact-finding conference and established a schedule for the submittal of written arguments and additional documents for the record. A hearing was then held before the Review Board.

#### Findings of the Review Board

The action under review is dated February 15, 2017 and states that it is a notice of violation. It states that the Gaines' building may not be occupied until authorized by the City's VMC official.

While not exactly matching the administrative language in the VMC for a notice of unsafe structure or structure unfit for human occupancy, that does appear to be the action the City was taking. As such, the VMC requires such notices to be issued by personal service to the owner, the owner's agent or the person in control of such structure.

The Gaines agree they received personal service of the February 15, 2017 notice on March 20, 2017, while at a meeting with City officials.

The City argues that the Gaines had actual notice of the February 15, 2017 action by the City, evidenced by filings in the City of Norfolk Circuit Court. The Review Board members find that the VMC requires personal service and the timeframes for filing an appeal of the City's action would be within 14 days of personal service, irrespective of whether actual notice had occurred earlier.

#### Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board members order the Gaines' appeal of the February 15, 2017 notice to be, and hereby by is, timely. In addition, since the City Appeals Board did not hear the Gaines' appeal on its merits,

the Review Board members order the Gaines' appeal to be, and hereby is, remanded to the City Appeals Board for a hearing on its merits.



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Vice-Chairman, State Building Code Technical Review Board

Date entered: 20 APRIL, 2018

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 Vernon Hodge, Acting 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.