

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD
(For Preliminary Hearing as to Jurisdiction)

IN RE: Appeal of Daniel Maller
Appeal No. 22-10

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 January 26, 2022, the County of Arlington Department of Community Planning, Housing, and Development (County), the agency responsible for the enforcement of Part I of the 2018 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), issued a Notice of Violation (NOV) to Daniel Maller (Maller) for two structures, located at 104 N. Montague, in the County of Arlington. The NOV cited violations related to construction without the required permits and lack of required inspections for the structures.

Maller filed an appeal to the Arlington County Board of Building Code Appeals (local appeals board) which was administratively denied by Gary Greene, Assistant Building Official, on May 31, 2022 for being untimely. The County did not convene the local appeals board and Maller's appeal was not heard; therefore, Maller appealed to the Review Board. While processing

Maller's appeal, Review Board staff advised the parties that no appeal to the Review Board shall lie prior to a final determination by the local appeals board.¹

III. Findings of the Review Board

A. Whether to remand the appeal to the local appeals board for a decision.

The County argued that the building code provides 30 days to file an appeal and if an individual does not file their appeal in 30 days then they have accepted the building official's decision. The County further argued that Mr. Maller did not file his appeal within 30 days; therefore, his appeal was untimely and the code official did not have to convene the local appeals board to hear his appeal.

Maller argued that his appeal was timely and that he was entitled to a hearing before the local appeals board but his appeal was administratively denied by the building official.

The Review Board finds that no appeal to the Review Board shall lie prior to a final determination by the local appeals board (§36-105). Further the local appeals board, not the building official, has the authority to determine whether an appeal is timely filed. Therefore, the Review Board remands the case to the local appeals board for decision.

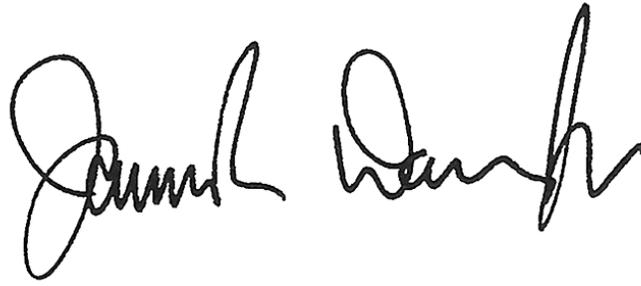
IV. Final Order

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

A. Whether to remand the appeal to the local appeals board for a decision.

The appeal is remanded to the local appeals board to hear the appeal and render a decision because no appeal to the Review Board shall lie prior to a final determination by the local appeals board (§36-105).

¹ See Review Board Case No. 91-16



Chair, State Building Code Technical Review Board

Date entered _____November 18, 2022_____

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.