



# **STATE BUILDING CODE TECHNICAL REVIEW BOARD**

## **APPEAL PARTICIPANT GUIDE**

**MAY 2020**

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**VIRGINIA DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT**

**DIVISION OF BUILDING AND FIRE REGULATION  
STATE BUILDING CODES OFFICE  
MAIN STREET CENTRE  
600 EAST MAIN STREET, SUITE 300  
RICHMOND, VIRGINIA 23219**

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## **Part 1 – Overview**

This guide is intended to assist persons involved in appeals before the State Building Code Technical Review Board (Review Board). It provides information on each aspect of the appeal process, including procedures used in the hearings before the Review Board.

The Review Board consists of 14 citizens appointed by the Governor to ensure Virginia's building code is administered fairly and well-understood by the citizens of Virginia. The organizations represented by the Review Board members are the American Institute of Architects Virginia, Virginia Society of Professional Engineers, Home Builders Association of Virginia, Virginia Branch of the Associated General Contractors of America, Virginia Building and Code Officials Association, State Fire Chiefs Association of Virginia, Virginia chapters of the National Apartment Association, and Virginia Association of Plumbing-Heating-Cooling Contractors.

The primary purpose of the Review Board is to hear appeals from enforcement actions under the Virginia Uniform Statewide Building Code, Virginia Statewide Fire Prevention Code, Virginia Industrialized Building Safety Regulations, and Virginia Certification Standards. Applicants for appeals are generally those persons or entities regulated under the building and fire codes and who disagree with an enforcement action. The codes require the filing of an appeal within a certain time period and generally an appeal must first be made to a local government appeals board and then to the Review Board if relief is not granted by the local board. Both the building and fire codes contain provisions advising of the right to appeal and directing aggrieved parties to the appropriate appeals board.

Virginia building and fire codes are enforced by either a local government enforcement agency (e.g., a building inspections office) or a state enforcement agency (e.g., the Virginia State Fire Marshal's Office; the Virginia Department of General Services, Division of Engineering and Buildings). Where there is a local government enforcement agency, appeals must first be heard by a local board of building code appeals (LBBCA) prior to being appealed to the Review Board.

Once an application for appeal has been filed to the Review Board, it generally takes Review Board staff three to four months to process the appeal and schedule a hearing before the Board.

## **Part 2 –Application for Appeal**

To initiate an appeal to the Review Board, the applicant must submit:

- A. A completed and signed Application for Appeal (application) to the State Building Codes Office (SBCO) located within the Virginia Department of Housing & Community Development (DHCD).
  - The application is available from the Review Board's website:  
<https://www.dhcd.virginia.gov/sites/default/files/Docx/sbctrb/file-appeal/appeal-application-may-19.pdf>
  - Is also available upon request from Review Board staff at [sbco@dhcd.virginia.gov](mailto:sbco@dhcd.virginia.gov) or by telephone request at 804-371-7150

- May be submitted by email, regular mail, fax, or in person.

**Note:** Applications for appeal to the State Review Board must be submitted within 21 calendar days of receipt of the decision being appealed. Applications for appeal to the State Review Board arising from the SFMO's enforcement of the code or from any local fire code enforcement if no local board of appeals exists shall be made to the State Review Board within 14 calendar days or receipt of the decision to be appealed.

B. Additional documents to be submitted with the application:

- A copy of the enforcement action being appealed (i.e. Notice of Violation; Inspection Notice; etc.)
- A copy of the application for appeal to the local appeals board
- A copy of the local appeals board decision (i.e. Resolution or Written Statement of the LBBCA)

**Note:** Applicants are encouraged to submit photographs or other documentation relative to the appeal not listed above.

While it is helpful for the applicant to provide all of the information listed on the application, it is not required for the application to be considered filed. When necessary for clerical purposes, Review Board staff will work with the applicant to ensure the correct parties and their respective contact information are listed on the application as this information is necessary for Review Board staff to properly process the application. Review Board staff will correspond via email with all parties in an appeal after an application is received to request they submit any information which they believe to be relevant to the appeal in order for the Review Board to properly decide the case.

## **Part 3 – Processing the Appeal**

Once Review Board staff receives an application for appeal, Review Board staff will review the information submitted to determine the appropriate method of processing it. The method will depend on the nature of the appeal and the circumstances. One of the following methods, or a combination of the following methods, may be employed in processing new appeals.

### **Preliminary Hearing**

If Review Board staff or an opposing party questions whether an appeal is valid due to issues such as timeliness, an improper appealing party, improper grounds (e.g., not appealing an application of the code), an appearance of the appeal not being properly before the Review Board (e.g., violations which were voluntarily corrected), etc., then Review Board staff may schedule a Preliminary Hearing before the Review Board to determine whether the appeal will be dismissed. In such cases, Review Board staff will draft a Staff Document which outlines the history and background of the appeal and identifies the issue(s) to be decided at the preliminary hearing. Review Board staff will then distribute the Staff Document to the parties and the preliminary hearing will be scheduled.

The Review Board generally meets on the third Friday of each month when they have business. About two to three weeks before the meeting, Board staff will mail the parties a Notice of Preliminary Hearing which will include the date, time and location of the meeting. Prior to the meeting, Review Board staff will also compile the documents and submittals from the parties into an agenda package. The agenda package is then mailed to the Review Board members about two weeks before the scheduled hearing. Concurrently, the parties will be sent an excerpt from the agenda package of the same information sent to the Review Board members on their respective appeal. This enables the Review Board members and the parties to have the same documentation at the Preliminary Hearing; it also helps the parties prepare to present their testimony at the hearing.

### **Staff Document/Formal Hearing**

In cases where the issues on appeal appear to be relatively simple or only involve technical provisions of the codes, Review Board staff may process the appeal by contacting the parties via email and giving them an opportunity to submit any documents they believe the Review Board members need to decide the case. Once the documents are received, Review Board staff will create a Staff Document outlining the background and history of the appeal and the issue(s) which appear to be present in the appeal. Review Board staff will then send the Staff Document to the parties with the opportunity to submit corrections, objections or additions to the Staff Document, and to submit written arguments concerning the appeal. Review Board staff will then schedule the hearing before the Review Board and will compile the documents and submittals from the parties into an agenda package. The agenda package is then mailed to the Review Board members about two weeks before the scheduled hearing. Concurrently, the parties are sent an excerpt from the agenda package of the same information sent to the Review Board on their respective appeal. This enables the Review Board members and the parties to have the same documentation for the hearing and helps the parties prepare to present their testimony at the hearing.

### **Informal Fact-Finding Conference/Formal Hearing**

When the issues in an appeal are found by Review Board staff to be unclear or complex, a proceeding known as an Informal Fact-Finding Conference (IFFC) may be scheduled to clarify the facts and history of the appeal and to identify the potential issue(s) for consideration by the Review Board. In such cases, Review Board staff will send a Notice of Informal Fact-Finding Conference to the parties which will include the date, time and location of the meeting. If Review Board staff is made aware that an attorney is involved, Review Board staff will send a Notice of Informal Fact-Finding Conference to the attorney(s) as well. Typically, Review Board staff will travel to the jurisdiction where the appeal originated and will contact the local government to see if a meeting room can be used within its facilities. If the parties are represented by an attorney, the attorney should attend the IFFC. The notice is sent by certified mail to the parties and by regular mail to the attorney(s). Review Board staff will also send a courtesy copy of the hearing notice via email to all parties and copy the attorneys involved. Review Board staff will facilitate the IFFC. Generally, Review Board staff will start the IFFC with an explanation of the code enforcement process, an overview of the arrangement of the codes involved in the appeal situation, and an overview of the appeals process. The appealing

party is then given an opportunity to describe the issues being appealed. Staff may request additional documents from the parties which relate to the issues under appeal.

After the IFFC, Board staff will draft a Staff Document as outlined in the previous section. To be clear, Review Board Staff does not make any findings, recommendations, or final decisions during the conference or in the Staff Document. The purpose of the Staff Document is to provide a history and background of the matter(s) under appeal and to set out the possible issues for resolution by the Review Board. As explained above, the Staff Document will be sent to the parties for their review and for the submission of objections or corrections to the Staff Document. Subsequently, the hearing on the appeal will be scheduled as outlined in the previous sections.

## **Part 4 – Appeal Hearing**

Once Review Board staff has processed the appeal application and drafted the Staff Document, the hearing date is established. The Staff Document and draft record, a collection of the documents submitted by both parties, will be emailed to all parties with a deadline for the final submittal. In the final submittal you may submit additions, corrections or objections to the Staff Document as well as additional documents, and written arguments to be included with the information going to the Review Board members for the appeal. Once Review Board staff receives the final submittal from all parties or after the deadline for submittal has past, Review Board staff will generate an agenda package for the Review Board meeting. The Review Board generally meets on the third Friday of each month when it has business (e.g., appeal hearings, requests for interpretation, etc.).

Approximately two to three weeks before the scheduled hearing, Review Board staff will send out a Notice of Hearing to the parties which will include the date, time, and location of the meeting. The notice is sent by certified mail to the parties and by regular mail to any attorneys representing the parties. Review Board staff will also email a courtesy copy of the Notice of Hearing to the parties and attorneys. Then, about two weeks before the hearing, the parties (and their attorney, if represented) will be sent the excerpt from the agenda package, along with a memo from the Chairman addressing certain aspects of the appeal hearing, and an “Order of Events” handout.

At the meeting, appeals are generally heard in the order in which they were received by Review Board staff. If a Preliminary Hearing is scheduled for the meeting, it is generally held first. The order of events handout establishes an order for the presentation of testimony in the appeal hearing which includes the time limits for each portion of the hearing listed below.

### *Preliminary Hearing*

*Opening statement and Testimony – 8 minutes*

*Cross examination – 5 minutes*

*Review Board Q&A – 13 minutes*

*Closing Statement/Final argument – 2 minutes*

### Appeals Hearing

*Opening statement and Testimony – 20 minutes*

*Cross examination – 10 minutes*

*Review Board Q&A – 30 minutes*

*Closing Statement/Final argument – 5 minutes*

In general, testimony is provided by the appellant (the party appealing) and their witnesses first, and then the appellee (the opposing party; typically, the code enforcement agency) may question the appellant. After all testimony from the appellant and their witnesses is heard and cross examination completed, then the appellee and any appellee witnesses may testify, and then the appellant may question the appellee. After the testimony of both parties is heard, the Review Board members may question any of the parties or their witnesses. Once the Review Board completes the questioning of the parties and their witnesses, both parties present their closing statements, typically the appellant provides their closing statement first, followed by the appellee. After both parties present their closing statements, the hearing is concluded.

## **Part 5 – Review Board Decision**

After the appeal hearing is concluded, the Review Board enters into deliberations to render a decision concerning the appeal. When there is more than one hearing scheduled for a particular meeting, the Chairman decides whether the deliberations will occur immediately following each appeal or if all deliberations will occur after all appeals have been heard. Regardless of whether the deliberations occur right after the appeal hearing or after all the appeal hearings, the deliberations are conducted in open session, just like the appeal hearings. The parties and public may attend; however, no further testimony will be heard.

Once the decision is made by the Review Board, a written decision is drafted by Review Board staff for the Review Board members to review at the next scheduled meeting. The written decision is known as a Final Order. Once the Final Order is approved by the Review Board, it is signed by the Chairman and distributed to the parties.

## **Part 6 – Rights of Further Appeal**

In accordance with the applicable laws, a statement concerning further right of appeal of the Review Board's decision to circuit court is included in the Final Order. The language from the Final Order is as follows:

*“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.”*

## **Part 7 – Miscellaneous Considerations**

This portion of the guide addresses, issues which have come up from time to time in appeal situations and notes how the issues have been handled by the Review Board or Review Board staff.

### ***Whether it is necessary to have an attorney representing a party in an appeal?***

There is no requirement for an attorney to be used by a party; therefore, it is up to the party whether they want to employ legal counsel.

### ***Can the Review Board hear an appeal if a local appeals board has not heard it?***

If the law(s) or code(s) under which the appeal is filed require a local board decision prior to the Review Board hearing an appeal, then every effort will be made to permit the local board to hear the appeal. If the timeframes for the local board to take action have passed, then an appeal may be filed with the Review Board. The Review Board may remand the appeal back to the LBBCA to hear the appeal. If it is still not heard within a reasonable or a stipulated time, then the Review Board may accept jurisdiction of the appeal.

### ***Can the Review Board hear issues that the local board has not heard in an appeal?***

As long as they are issues related to the application of the code which was appealed, the Review Board can generally consider them, even if not considered by a local board. The Board has authority to remand appeals back to a local board at its discretion.

### ***How are requests for continuances handled?***

If a party requests a continuance of an appeal, and the other parties agree, then Review Board staff has the authority, granted by the Review Board, to reschedule the appeal hearing. If one of the parties does not agree to a continuance request, then the appeal will be docketed for the meeting when it is ready and the parties may attend or submit a written statement concerning the continuance request. The Chairman will address and rule on the continuance request at the beginning of the hearing. If the continuance request is denied, the hearing will take place as scheduled.

## **Part 8 – Contact and Other Information**

Applications for appeal to the Review Board may be downloaded from the Appeals page of the agency website listed below. Also available on the website is general information about the Review Board and its members; a list of past decisions; and past meeting minutes. Review Board staff may be contacted at any time during normal business hours at the phone number or email address listed below.



Virginia Department of Housing and Community Development  
Division of Building and Fire Regulation  
State Building Codes Office  
Main Street Centre  
600 E. Main Street, Suite 300  
Richmond, Virginia 23219  
Telephone: (804) 371-7150

Website: <https://www.dhcd.virginia.gov/state-building-code-technical-review-board-sbctrb>

Email: [sbco@dhcd.virginia.gov](mailto:sbco@dhcd.virginia.gov)