

**STATE BUILDING CODE TECHNICAL REVIEW BOARD
MEETING MINUTES
January 19, 2018
Glen Allen, Virginia**

Members Present

Mr. W. Keith Brower
Mr. Vince Butler
Mr. Alan D. Givens
Mr. Joseph Kessler
Mr. Eric Mays, PE
Mr. E. G. Middleton, III
Ms. Joanne Monday
Ms. Patricia S. O'Bannon
Mr. W. Shaun Pharr, Esq.
Mr. Aaron Zdinak, PE
Mr. Richard C. Witt

Members Absent

Mr. James R. Dawson, Vice Chairman
Mr. Daniel Crigler

Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order at approximately 10:00 a.m. by the Acting Secretary Mr. Vernon W. Hodge, since no other officers were present.

Roll Call

The roll was called by Mr. Hodge and a quorum was present. Mr. Justin I. Bell, the board's legal counsel from the Attorney General's Office, was also present.

Mr. Hodge welcomed new member Richard C. Witt, appointed to represent the Virginia Building and Code Officials Association as a replacement for long-time board member and chairman, J. Robert Allen. Mr. Witt provided a brief introduction of himself and indicated he was honored to serve. Board members welcomed him.

Election of Chairman
Pro Tem

Mr. Hodge advised board members that in instances where the Chairman and Vice-Chairman were absent, the customary procedure is to elect a chairman pro tem to serve as chairman for the meeting. After discussion, Mr. Mays nominated Mr. Pharr as chairman pro tem for the meeting. The motion was seconded by Mr. Kessler and passed unanimously with Mr. Pharr abstaining from the vote.

Election of Officers,
Generally

Mr. Hodge advised that the officers serve for a term of two years and the last election of officers was on May 20, 2016; however in June of 2017, there was an appointment of an acting secretary until January of 2018, so action needed to be taken on the acting secretary position. Mr. Hodge suggested since he was not retiring until June 1, 2018, that the acting secretary position be extended to coincide with the normal terms of the officers (May 20, 2018). Ms. O'Bannon moved to extend

the acting secretary position to coincide with the terms of the chairman and vice-chairman positions, at which time a permanent secretary would be elected, if appropriate. The motion was seconded by Mr. Witt and passed unanimously.

Approval of Minutes

The draft minutes of the November 17, 2017 meeting in the Review Board members' agenda package were considered. Ms. O'Bannon moved to approve the minutes as presented. The motion was seconded by Mr. Zdinak. Mr. Pharr then offered a substitution motion to change the last sentence under the heading, "Decision: Appeal of Deborah Caldwell-Bono and Benny Bono; Appeal No. 17-6:" to read, "Mr. Mays expressed his concerns with the decision, as did Mr. Pharr." Mr. Mays seconded the substitute motion and a vote was taken. The motion passed with Messrs. Butler, Middleton and Witt abstaining from the vote.

Final Orders

Appeal of Deborah Caldwell-Bono and Benny Bono; Appeal No. 17-6:

After consideration of the final order presented in the agenda package, Mr. Mays moved to approve the final order with the following rewrite of the last paragraph in the "Findings of the Review Board" section:

"The remaining issue raised by the Bonos is a claim that the building in question is unsafe based on their engagement of an architect to contact the building commissioner with his concerns. The farm building on the adjacent property in question is more than fifty feet (50') from the Bono's property line. Additionally, the Bonos have no existing structures in proximity to the property line. Therefore, while it is true that there are no standards for farm buildings due to the statutory exemption from the state building code, the issue of safety is more applicable to building occupants than to the Bonos. Consequently, that issue does not make the Bonos aggrieved by the building commissioner's decision."

Ms. O'Bannon seconded the motion and it passed unanimously with Messrs. Butler, Middleton and Witt abstaining from the vote.

Subsequent to the approval of the final order, Mr. Kessler raised the issue of the Attorney General's Opinion concerning farm buildings which was made part of the record in the Bono appeal and whether the Review Board could request an updated opinion. Mr. Bell advised that it may be possible, but noted that the law has not changed since the current opinion was issued. After further discussion, Mr. Kessler moved to have staff and legal counsel look into it further and report

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back at the next meeting. The motion was seconded by Mr. Brower and passed unanimously.

Public Comment

Chairman Pro Tem Pharr opened the meeting for public comment. Mr. Hodge advised that no one had signed up to speak. With no one coming forward, Mr. Pharr closed the public comment period.

New Business

Preliminary Hearing (as to whether timely) – Appeal of Joshua and Makiba Gaines; Appeal No. 17-11:

Mr. Middleton informed the board members that he would be recusing himself from this case as he is on the City of Norfolk local board of building code appeals, which heard the appeal prior to it being appealed to the Review Board.

A preliminary hearing convened with Chairman Pro Tem Pharr serving as the presiding officer. The issue to be resolved is whether the Gaines filed a timely appeal of enforcement action under Part III of the Virginia Uniform Statewide Building Code (the Virginia Maintenance Code) by the City of Norfolk Department of Neighborhood Development concerning the Gaines' rental property at 2410 West Avenue.

The following persons were sworn in and given an opportunity to present testimony:

Josh Gaines
Makiba Gaines
Sherry Johnson; for the City of Norfolk

Also present was:

Cynthia Hall, Esq.; legal counsel for the City of Norfolk

There was consideration of a late submittal by the Gaines. Mr. Hodge advised the board members that the Gaines' submittal was essentially a reply brief to the City of Norfolk's brief, but due to time constraints between the informal fact-finding conference and the hearing date, only one submittal date was established staff and not a reply brief schedule.

After discussion, Mr. Mays moved to exclude the late submittal. The motion was seconded by Mr. Kessler. After further discussion concerning that the information in the reply brief could be submitted

through testimony, Mr. Mays withdrew his motion. Chairman Pro Tem Pharr then ruled to accept the late submittal as Appellant Exhibit A.

Testimony was then presented concerning whether the Gaines had filed a timely appeal to the City of Norfolk Local Board of Appeals from both parties.

After testimony concluded, Chairman Pro Tem Pharr closed the preliminary hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Joshua and Makiba Gaines; Appeal No. 17-11:

After deliberation of the preliminary issue of the timeliness of the Gaines' appeal, Mr. Mays moved to overturn the decision of the City of Norfolk Local Board of Appeals and hold that the Gaines' appeal was timely since the February 15, 2017 notice of placarding issued by the City of Norfolk was not served by personal service and did not contain a statement of right of appeal. The motion was seconded by Ms. Monday and passed unanimously.

Mr. Mays further moved that since the merits of the appeal had not been heard by the City of Norfolk Local Board of Appeals, that the appeal be remanded to the local board for a hearing on the merits. The motion was seconded by Mr. Givens and passed unanimously.

Appeal of Harvey and Ann Dupree (A...H Variety); Appeal No. 17-10:

A hearing convened with Chairman Pro Tem Pharr serving as the presiding officer. The appeal involved citations under the Virginia Statewide Fire Prevention Code by the State Fire Marshal's Office at a warehouse and merchandise sales facility owned by the Duprees and located at 456-554 Piney Pond Road in Brunswick Country.

The following persons representing the Virginia State Fire Marshal's Office were sworn in and given an opportunity to present testimony:

Dee Madsen
Ron Reynolds

Brian M. McGraw

Mr. Hodge informed the Review Board members that the Duprees had been properly notified of the hearing and that they had also not been present at an informal fact-finding conference scheduled for the appeal. In addition, the State Fire Marshal's Office had issued a third set of violations for the property after the Board's agenda package had been distributed and a copy was provided to supplement the record in the agenda package.

Prior to testimony, State Fire Marshal McGraw asserted that the issues for resolution in the Review Board staff summary were too broad. Mr. Hodge informed the Review Board members that the issues in the staff summary were based on the Duprees filing a notice of appeal and not attending the informal fact-finding conference to clarify the extent of their appeal. Chairmen Pro Tem Pharr stated based on the absence of the Duprees at the hearing, the appeal would be limited to those issues identified for resolution by the Duprees in a handwritten note submitted along with the appeal application identifying the notice to be invalid because Ms. Dupree was not notified of the notice and the notice concerning the back door was invalid because the back door is only used as a loading dock and not as an entrance or exit.

After testimony concluded, Chairman Pro Tem Pharr closed the hearing and stated a decision from the Review Board members would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Harvey and Ann Dupree (A...H Variety); Appeal No. 17-10:

After deliberation of whether the notices were valid due to the lack of notification of Ms. Dupree, Mr. Kessler moved that there was adequate notice. The motion was seconded by Mr. Butler and passed unanimously.

After deliberation of whether there was a violation relative to the back door leading to the loading dock, Mr. Mays moved to uphold the citation. The motion was seconded by Mr. Middleton and passed with Mr. Kessler voting in opposition.

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After deliberation of whether there was a violation relative to the loading dock itself, Mr. Butler moved to uphold the citation. The motion was seconded by Mr. Witt and passed unanimously.

Secretary's Report

Mr. Jeff Brown, Associate Director of the State Building Codes Office, provided the Review Board members with an update on the effective date of the 2015 editions of the agency's building and fire codes. He also acknowledged the hiring of three new employees to the State Building Codes Office: Holly Squares, an administrative assistance to replace Jane Terry, who moved to the DHCD's Director's Office and Terry Steen and Casey Littlefield, technical staff, who were present at the meeting.

Mr. Hodge informed the Review Board members that the next meeting would be either March or April.

Adjournment

There being no further business, Mr. Middleton moved to adjourn the meeting at approximately 1:45 p.m.

Approved: April 20, 2018

_____/S/_____
Vice-Chairman, State Building Code Technical Review Board

_____/S/_____
Acting Secretary, State Building Code Technical Review Board