

STATE BUILDING CODE TECHNICAL REVIEW BOARD
MEETING
January 23, 2009
RICHMOND, VIRGINIA

Members Present

Mr. J. Robert Allen, Chairman
Mr. R. Schaefer Oglesby, Vice-Chairman
Mr. John W. Ainslie, Jr.
Mr. Matthew Arnold
Mr. J. Daniel Crigler
Mr. James R. Dawson
Mr. John H. Epperson
Mr. Joseph A. Kessler, III
Mr. John A. Knepper, Jr.
Mr. James N. Lowe
Mr. Eric Mays
Ms. Joanne D. Monday
Ms. Patricia S. O'Bannon

Member Absent

Mr. Bruin Richardson (Resigned)

Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order by the Vice-Chairman at approximately 10:00 a.m.

Roll Call

The attendance was established by Mr. Vernon W. Hodge, Secretary, and constituted a quorum. Mr. Tom Nesbitt, Assistant Attorney General of the State Office of the Attorney General, and the Board's legal counsel, was also present.

Approval of Minutes

Mr. Oglesby moved to approve the minutes of the November 21, 2008 meeting as presented in the Review Board members' agenda package. The motion was seconded by Mr. Lowe and passed unanimously with Mr. Arnold and Ms. O'Bannon abstaining from the vote.

New Business

Appeal of Fairfax Propane; Appeal No. 06-5:

Mr. Arnold recused himself from the appeal hearing and deliberations stating that he had heard the case as a member of the Fairfax County Local Board of Building Code Appeals ("County appeals board").

Mr. Kessler arrived at approximately 10:05 a.m.

New Business

Appeal of Fairfax Propane; Appeal No. 06-5 (continued):

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned the parking of liquefied petroleum gas tank trucks at 420 Mill Street, NE, in Vienna, and the application of the Virginia Statewide Fire Prevention Code ("SFPC") by the Fairfax County Fire and Rescue Department (the "fire official").

Christopher DeCarlo ("DeCarlo"), the owner of Fairfax Propane, was further appealing a decision of the County appeals board which upheld the fire official's determination that parking the trucks would be a violation of the SFPC.

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

DeCarlo, for Fairfax Propane
Keith H. Johnson, for the fire official
W. Trice Burgess, Jr., for the fire official

Also present were:

Jonathan Shoemaker, Esq., counsel for Fairfax Propane
Paul Emerick, Esq., counsel for the fire official

The Chairman advised the parties that the Board would first hear testimony on whether to dismiss the appeal because no application of the SFPC had been made and secondly whether the appeal was moot due to the enactment of a local fire prevention regulation which prevented DeCarlo from parking the trucks irrespective of the application of the SFPC.

During the course of testimony, the following exhibit was submitted by the fire official without objection:

Exhibit A -- Copy of an amendment to the Code of the County of Fairfax

New Business

Appeal of Fairfax Propane; Appeal No. 06-5 (continued):

After testimony concluded on the preliminary issues, the Chairman closed the hearing and deliberations began in open session.

Decision: Appeal of Fairfax Propane; Appeal No. 06-5:

After deliberation, Mr. Mays moved to dismiss the appeal as moot due to the existence of a Fairfax County fire prevention regulation preventing DeCarlo from parking his trucks. The motion was seconded by Mr. Dawson and a verbal vote was taken. As the verbal vote was not conclusive, the Chairman then called for a vote by show of hands. The motion passed with six members voting "yea" and five members voting "nay."

The Chairman then stated 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.

As a verbal post-hearing submittal, counsel for DeCarlo requested that the Board stay its decision pending a challenge of the validity of the Fairfax County fire prevention regulation. The Chairman ruled to deny the request.

Appeal of Danville Historical Society; Appeal No. 08-5:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned a condemnation notice issued by the City of Danville under the Virginia Maintenance Code (Part III of the Virginia Uniform Statewide Building Code, or "USBC") for buildings which were part of the Dan River Mill complex. The notice was appealed by the Danville Historical Society to the City of Danville USBC appeals board, which upheld the issuance of the notice. The Historical Society further appealed to the Review Board.

New Business

Appeal of Danville Historical Society; Appeal No. 08-5 (continued):

Mr. Lowe informed the parties that he was a resident of Pittsylvania County and operated a heating and air-conditioning business in and around the City of Danville and therefore conducted business with the City of Danville; however, he had no financial conflict of interest with any of the parties and believed he could impartially participate in the appeal in his capacity as a board member. The parties did not object to Mr. Lowe participating in the appeal.

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

Gary Grant, for Danville Historical Society
Bob Carter, for Danville Historical Society
Louis Malon, for Danville Historical Society
Jerry Rigney, for City of Danville
David Eagle, for City of Danville
Rick Barker, for River Partnership
Ben Davenport, for River Partnership

Also present were:

Charles R. Beller, III, Esq., co-counsel for Historical Society
Lee Taylor, Esq., co-counsel for Historical Society
Clarke Whitfield, Esq., counsel for City of Danville
Edward Hodges, Jr., Esq., counsel for River Partnership

The Chairman advised the parties that the Board would first hear testimony on whether the City of Danville's Circuit Court ruling precluded the Review Board from ruling on whether the Danville Historical Society was a proper party to file an appeal and secondly whether the appeal was moot due to the demolition of the buildings in question.

After testimony concluded on the preliminary issues, the Chairman closed the hearing and deliberations began in open session.

New Business

Decision: Appeal of Danville Historical Society: Appeal No. 08-5:

After deliberation, Mr. Epperson moved that the appeal was not moot with respect to buildings five and seven, as they were still standing. The motion was seconded by Mr. Oglesby and passed with only Mr. Arnold voting in opposition.

Next Mr. Oglesby moved that the Review Board was precluded from considering whether the Historical Society had standing due to the court decision. The motion was seconded by Mr. Crigler and passed with only Mr. Arnold voting in opposition.

Appeal of Danville Historical Society: Appeal No. 08-5 (continued):

The Chairman reopened the hearing for testimony on whether to overturn the issuance of the notice relative to buildings five and seven.

During testimony, Mr. Mays raised the issue of whether the appeal was moot due to River Partnership voluntarily obtaining a demolition permit. After the parties were permitted to present arguments relative to that issue, the Chairman closed the hearing for deliberation of the issue. After deliberation, Mr. Mays moved to dismiss the appeal as moot due to the issuance of the demolition permit. The motion was seconded by Mr. Dawson. After discussion, Mr. Oglesby made a substitute motion that no more testimony was needed and that the Review Board should uphold the decision of the City of Danville and its USBC appeals board. The substitute motion was seconded by Ms. O'Bannon. After discussion concerning whether Mr. Oglesby's motion was in order since the parties had not presented all of the testimony, the Chairman called for a vote on the substitute motion by show of hands. The motion failed with three members voting "yea" and the rest of the board members voting "nay." The Chairman then returned to Mr. Mays original motion and a verbal vote was taken. As the verbal vote was not conclusive, the Chairman then called for a vote by show of hands. The motion failed with five members voting "yea" and seven members voting "nay."

New Business

Appeal of Danville Historical Society; Appeal No. 08-5 (continued):

The Chairman then reopened the hearing for further testimony on whether to overturn the issuance of the notice relative to buildings five and seven.

During the course of testimony, the following exhibit was submitted by the City of Danville without objection:

Exhibit A – Compact disc containing pictures of buildings five and seven.

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board 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 would be distributed to the parties when approved.

Decision: Appeal of Danville Historical Society; Appeal No. 08-5:

After deliberation, Ms. O'Bannon moved to uphold the decision of the City of Danville and its USBC appeals board. The motion was seconded by Mr. Oglesby and passed with Mr. Kessler voting in opposition.

Interpretations

In continuation of discussion from the last meeting concerning an interpretation request from the Prince William County Fire Marshal, Review Board members reviewed a settlement agreement drafted by Mr. Nesbitt. After discussion, Mr. Arnold moved to approve the agreement as modified based on the Board's policy for handling interpretation requests. The motion was seconded by Mr. Kessler and passed unanimously with Mr. Mays abstaining from the vote.

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Old Business In continuation of discussion from the last meeting concerning the recommendation for a code change proposal to address limitations of delegation of authority for third-party inspector policies, the Review Board members considered a revised proposal. The motion was seconded by Mr. Crigler and passed unanimously.

Adjournment There being no further business, the meeting was adjourned by motion of Mr. Epperson at approximately 5:30 pm.

Approved: March 20, 2009

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

/S/
Secretary, State Building Code Technical Review Board