

MEETING
June 18, 2010

RICHMOND, VIRGINIA

Members Present

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

Members Absent

Mr. John W. Ainslie, Jr.
Mr. W. Keith Brower, Jr.
Mr. John A. Knepper, Jr.

Call to Order

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

Roll Call

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

Review Board staff person, Alan McMahan, advised the Chairman that Mr. Knepper was not in attendance due to a death in the family and a sympathy card was being passed around to send to him.

Approval of Minutes

Mr. Oglesby moved to approve the minutes of the April 16, 2010 meeting as presented in the Review Board members' agenda package. The motion was seconded by Mr. Lowe and passed with Mr. Dawson and Mses. Monday and O'Bannon abstaining from the vote.

Final Orders

Appeal of Betty C. Hill; Appeal No. 08-12:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Crigler and passed with Mr. Dawson and Mses. Monday and O'Bannon abstaining from the vote.

Appeal of Charles R. Dalton; Appeal Nos. 09-14 and 09-15:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Crigler and passed with Mr. Dawson and Mses. Monday and O'Bannon abstaining from the vote.

Messrs. Epperson and Mays arrived at approximately 10:10 a.m.

Appeal of Walter Smith; Appeal No. 09-17:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Lowe and passed with Mr. Dawson and Mses. Monday and O'Bannon abstaining from the vote.

New Business

Appeal of Leonard Harris; Appeal No. 09-16:

A preliminary hearing convened with the Chairman serving as the presiding officer. The appeal concerned the rebuilding of a fire damaged building owned by Mr. Harris and located at 10760 Jefferson Ave, in Newport News, and whether a existing building permit under the Virginia Uniform Statewide Building Code (USBC) for the reconstruction of the building could be reinstated, or whether a new permit needed to be obtained. After Mr. Harris' appeal to the City of Newport New Board of Building Code Appeals, where the City USBC official's decision to require a new permit was upheld, Mr. Harris voluntarily submitted a permit application for a new permit, so Review Board staff scheduled a preliminary hearing before the Review Board to determine whether any dispute still existed.

New Business

Appeal of Leonard Harris; Appeal No. 09-16 (continued):

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

Leonard Harris

Michael Redifer, for the City of Newport News

No exhibits were submitted by the parties to supplement the documents in the Review Board's agenda package.

After testimony concluded, the Chairman closed the preliminary 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, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Leonard Harris; Appeal No. 09-16:

After deliberation, Mr. Mays moved to dismiss the appeal as moot due to Mr. Harris' submittal of an application for a new building permit and the approval of the application by the City of Newport News USBC department. The motion was seconded by Mr. Oglesby and a vote was taken. The motion failed with a vote of three "yeas" and eight "nays."

After further deliberation, Mr. Epperson moved that Mr. Harris' appeal was not moot due to the fact that he had only applied for the new permit, but not obtained it, and that he testified that he still wanted the old permit reinstated. The motion was seconded by Mr. Crigler and passed with Messrs. Dawson, Mays and Oglesby voting in opposition.

New Business

Appeal of Dark Star Investment Company; Appeal No. 07-7:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned enforcement action under Part III of the USBC, the Virginia Maintenance Code, by the City of Hampton USBC department relative to a house owned by Dark Start Investment Company and located at 840 North First Street, in Hampton.

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

Steve Shapiro, for the City of Hampton

Also present was:

Lesa Yeatts, Esq., counsel for the City of Hampton

Mr. Hodge informed the Chairman that Dark Star Investment Company, through its counsel, had requested a continuance of the appeal hearing, citing a conflict in his schedule involving a court appearance concerning a different matter that he was unable to reschedule. As the City of Hampton had not agreed to the continuance request, the parties were informed that under current Review Board policy, the Review Board members would have to rule on the request.

The Chairman permitted the representatives of the City of Hampton to briefly speak to the continuance request.

The Chairman then presented the question of whether to grant the continuance request to the Review Board members. After discussion, Mr. Oglesby moved to approve the continuance request. The motion was seconded by Mr. Epperson and passed unanimously.

New Business

Appeal of Aaron Harcrow; Appeal No. 08-7:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned enforcement action under Part III of the USBC, the Virginia Maintenance Code, by the City of Hampton USBC department relative to a house owned by Mr. Harcrow and located at 412 S. Armistead Avenue, in Hampton.

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

Aaron Harcrow
Steve Shapiro, for the City of Hampton
Donnie Harris, for the City of Hampton

Also present was:

Lesa Yeatts, Esq., counsel for the City of Hampton

Mr. Harcrow motioned for summary judgment against the City of Hampton citing various reasons. The Chairman denied Mr. Harcrow's motion stating that all the evidence presented would be taken into consideration by the Review Board members in reaching a decision in the appeal.

Mr. Harcrow then requested that a subpoena be issued to compel the attendance of an inspector in the City of Hampton USBC department. The Chairman permitted the representatives of the City of Hampton to address the request, then presented the question to the Review Board members. After discussion, Mr. Dawson moved to deny the request as unnecessary. The motion was seconded by Ms. O'Bannon and passed unanimously.

During the testimony from the City, the following exhibit was submitted with objection by Mr. Harcrow, overruled by the Chairman:

Exhibit A – Recent Pictures of Mr. Harcrow's House

New Business

Appeal of Aaron Harcrow; Appeal No. 08-7 (continued):

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, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Aaron Harcrow; Appeal No. 08-7:

After deliberation concerning the issue of whether any USBC violations were present, Mr. Lowe moved to uphold the citations issued by the City of Hampton USBC department. The motion was seconded by Epperson and passed unanimously.

After deliberation concerning the issue of the timeframes for repairs to be made, Mr. Epperson moved to require repairs to be completed by September 30, 2010. The motion was seconded by Ms. Monday. After continued deliberation, Mr. Kessler offered a substitute motion to uphold the 30 day timeframe for repairs to be completed to run from the entering of the final order in the appeal. The substitute motion was seconded by Mr. Arnold. After further deliberation, Mr. Kessler amended his motion to include upholding the City USBC department and City USBC board's decisions to require demolition of the house if repairs are not completed within the stipulated timeframes. The amended substitute motion was seconded by Mr. Arnold and passed unanimously.

Appeal of Ephesus Baptist Church; Appeal No. 10-1:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned the construction of a new family life center on the property of Ephesus Baptist Church, located at 1642 Smith Cross Road, in Mecklenburg County, and whether a sprinkler system was required for the building, given an exception in the USBC which permits churches with up to 12,000 square feet to be non-sprinklered irrespective of the occupant load.

New Business

Appeal of Ephesus Baptist Church; Appeal No. 10-1 (continued):

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

Earl Stanley, for Ephesus Baptist Church
Wes McAden, for Ephesus Baptist Church
Kenny Pitts, for Ephesus Baptist Church
David Hash, for Mecklenburg County
Eddie Harris, for Mecklenburg County

Also present was:

Patrick McSweeney, Esq., counsel for Ephesus Baptist Church

No exhibits were submitted by the parties to supplement the documents in the Review Board's agenda package.

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, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Ephesus Baptist Church; Appeal No. 10-1:

After deliberation, Mr. Arnold moved to overturn the decision of the Mecklenburg County USBC department and the County USBC board and hold that the family life center was a church for the application of Section 903.2.1.3 of the USBC. The motion was seconded by Mr. Epperson and a vote was taken. The motion failed with a vote of four "yeas" and five "nays." After further deliberation, Mr. Dawson moved to uphold the decision of the Mecklenburg County USBC department and the County USBC board that the family life center was not a church for the application of Section 903.2.1.3 of the USBC. The motion was seconded by Mr. Crigler and passed with Messrs. Arnold, Epperson, Lowe and Oglesby voting in opposition.

New Business

Appeal of Richard N. Clayton; Appeal No. 10-2:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned whether violations of the Virginia Statewide Fire Prevention Code (SFPC) are present in a condominium building located at 120 Roberts Lane in the City of Alexandria. Mr. Clayton is the owner of one of the units in the building.

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

Richard C. Clayton
John Catlett, for the City of Alexandria

Also present were:

Mary O'Donnell, Esq., counsel for the City of Alexandria
Michael Thorsen, Esq., counsel for the Fort Ellsworth Unit
Owner's Association

No exhibits were submitted by the parties to supplement the documents in the Review Board's agenda package.

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, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of Richard N. Clayton; Appeal No. 10-2:

After deliberation, Mr. Lowe moved to uphold the decision of the City of Alexandria fire official and the City SFPC appeals board that no violations of the SFPC were present in Mr. Clayton's building. The motion was seconded by Mr. Kessler. In further deliberation, Mr. Hodge suggested that the decision should address the applicability of the Virginia Public Building Safety Regulations to the building, as they are referenced in the SFPC. A vote was taken and the motion passed unanimously.

New Business

Appeal of John Catlett, Alexandria Building Official; Appeal No. 10-6:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned an addition to the home of Mark Holmes and Marianne Bizek located at 217 Woodland Terrace, in the City of Alexandria, constructed by Culver Design Build between 1999 and 2001, and whether the City USBC department has enforcement authority for USBC violations occurring during the construction of the addition.

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

Mark Holmes
Marianne Bizek
John Catlett, for the City of Alexandria
Gregg Fields, for the City of Alexandria
Craig Wallace, witness for the homeowners
Sloan Culver

Also present was:

Mary O'Donnell, Esq., counsel for the City of Alexandria

During testimony the following exhibits were submitted without objection:

Holmes/Bizek Exhibit A – Attorney General's Opinion
Culver Design Build Exhibit A – Statement

After the main testimony concluded, the Chairman informed the parties that due to the late hour the appeal would have to be continued for final statements and questioning by the Board members at the next Review Board meeting.

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Adjournment

The meeting was adjourned by motion of Mr. Mays at approximately 6:45 p.m.

Approved: August 20, 2010



Chairman, State Building Code Technical Review Board

Secretary, State Building Code Technical Review Board

VIRGINIA:

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

IN RE: Appeal of Leonard Harris
Appeal No. 09-16

Preliminary Hearing Date: June 18, 2010

BACKGROUND

The matter is brought before the Review Board for preliminary determination of whether Harris' appeal is moot due to the resolution of the matter under appeal.

In 2006 or 2007, Harris obtained a building permit under the Virginia Uniform Statewide Building Code (the "USBC") from the City of Newport News USBC department (the "building official") to rebuild a shopping center building which had been damaged by fire.

As no substantial progress was made on the reconstruction, Harris' permit was revoked by the building official in early 2009. Harris requested the reinstatement of the building permit, which was denied by the building official.

Harris then appealed the denial to the City of Newport News USBC appeals board, which upheld the building official's decision.

Harris then further appealed to the Review Board.

Subsequent to the ruling by the City of Newport News USBC appeals board, Harris voluntarily applied for a new building permit and the permit application was approved by the building official.

A preliminary hearing was scheduled before the Review Board to decide whether that action rendered the appeal moot. The preliminary hearing was attended by Harris and the building official.

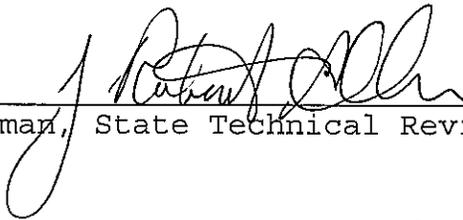
At the preliminary hearing, Harris stated that he applied for the new building permit due to the City threatening zoning action against him and that he would have had to move equipment and supplies off the site unless applying for the new permit. Harris also stated that while he had applied for the permit, he had not paid the permit fees or obtained the new permit. Harris stated he still desired to have the original building permit reinstated and wanted to move forward with the appeal.

The building official verified that Harris had not yet obtained the new building permit and stated that Harris would be entitled to a partial refund from the original building

permit fee, which could be applied to the new permit fee, if obtaining the new permit.

RULING

The Review Board finds that Harris' appeal to the Review Board is not rendered moot since he has not obtained the new building permit. Harris' appeal on whether the original building permit should be reinstated will be processed by the Review Board staff for a hearing on its merits at a subsequent meeting of the Review Board.



Chairman, State Technical Review Board

Aug. 20, 2010
Date Entered

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 preliminary ruling or the date it was mailed to you, whichever occurred first) within which to appeal this preliminary ruling by filing a Notice of Appeal with Vernon W. Hodge, 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.

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Aaron Harcrow
Appeal No. 08-7

Hearing Date: June 18, 2010

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 the Virginia Uniform Statewide Building Code ("USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Aaron Harcrow ("Harcrow"), the owner of a existing house located at 412 S. Armistead Avenue, in the City of Hampton, appeals the application of the USBC¹ by the City of Hampton Department of Codes Compliance (the "code official").

Harcrow acquired the house in 1990 and lived there until moving to Georgia in the early 2000s. The house was then rented. At some point, either while Harcrow was living there, or subsequently, the house was divided into two apartments. There is no record of any approval from the City of Hampton USBC department for the conversion of the house from a single-family dwelling to a two-family dwelling.

Harcrow was cited under the USBC for violations relating to the maintaining the exterior of the house as far back as 1997 and the house was included in a list of properties by the City which were considered to be public nuisances.

In 2001, after Harcrow had completed some repairs, the code official informed Harcrow that they would consider temporarily removing the property from the public nuisance file and that Harcrow was authorized to lease the property.

In 2006, the code official issued a notice of unsafe structure to Harcrow for the house and garage informing Harcrow

¹The enforcement action under appeal in this matter is concerning Part III of the USBC, the Virginia Maintenance Code.

that the house was unfit for human habitation and that the house and garage needed to be either brought into compliance with the USBC or demolished within 30 days. The notice included a non-specific or generalized list of USBC violations categorized by the chapters of the USBC addressing different building components, such as structural, exterior, interior, plumbing, etc.

Harcrow appealed the notice to the City of Hampton USBC appeals board ("City appeals board"), which heard the appeal in December of 2006 and ruled to permit Harcrow to make the repairs necessary for the code official to approve occupancy of the house so Harcrow could obtain rent money to continue with the repairs.

Between 2006 and 2008, the code official issued numerous inspection reports outlining USBC violations still outstanding at Harcrow's house. In May of 2008, the City appeals board met again to consider the situation and after hearing testimony from both the code official and Harcrow, the City appeals board issued a ruling to revoke the approval given for Harcrow to rent the portion of the house identified as the front apartment, or Apartment 1, and further ruled to give Harcrow 30 days to correct all USBC violations cited by the code official, and if not corrected, the City would be authorized to proceed with the

demolition of the house with no further action by the City appeals board.

Harcrow further appealed the City appeals board's ruling to the Review Board.

The hearing of Harcrow's appeal before the Review Board was attended by Harcrow and the code official.

III. FINDINGS OF THE REVIEW BOARD

Harcrow argues that the USBC citations were not specific enough to determine what needed to be corrected and that he did not find any health or safety problems associated with the house.

Harcrow acknowledged that he rented the portion of the house considered to be a second apartment without the approval of the code official.

The Review Board finds the citations listed in the notices dated February 17 and May 14, 2007 and April 29, 2008 to be sufficiently clear for Harcrow to understand what USBC violations are present and given the testimony and pictures submitted, all citations appear to be valid.

The Review Board further finds that Harcrow has been given ample time to address the violations and has instead been somewhat evasive, non-cooperative, disingenuous and

nonresponsive. As such, to continue to give Harcrow additional time to address the issues would be counterproductive.

Therefore the Review Board finds that the decision of the code official, upheld by the City appeals board, that Harcrow be given thirty (30) days to correct all outstanding USBC violations or that the house be demolished is an appropriate application of the USBC.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the code official and City appeals board that Harcrow be required to correct all outstanding USBC violations within thirty (30) days or that the house be demolished is hereby upheld. The thirty (30) days is to run from the entering of this final order.



Chairman, State Technical Review Board



Date Entered

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 W. Hodge, 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.

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Ephesus Baptist Church
Appeal No. 10-1

Hearing Date: June 18, 2010

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (the "Review Board") is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code (the "USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Representatives of Ephesus Baptist Church ("Ephesus") appeal a determination by the Mecklenburg County USBC official (the "building official") concerning the construction of a family life center on the church property.

Ephesus is located at 1642 Smith Cross Road, in the town of South Hill, in Mecklenburg County. The property has an existing large single story church building.

In 2009, Ephesus presented plans to the building official for the construction of a new family life center adjacent to the existing church building. The new building was approximately 11,656 square feet in floor area and was to be connected to the existing church building by a vestibule area.

The plans were approved by the building official and a building permit was issued; however, the plans included the use of a sprinkler system as part of the construction of the building for fire protection purposes.

At some point during construction of the building, the issue of whether a sprinkler system was necessary was raised by Ephesus based on a USBC provision which states that a sprinkler system is required in assembly buildings having an occupant load of 300 or more persons, except in churches, where only a square footage requirement is considered rather than an occupant load

requirement. Ephesus was over the occupant load threshold for the necessity of a sprinkler system, unless the building was considered to be a church.

In October of 2009, the building official informed Ephesus in writing that a sprinkler system was required.

Ephesus appealed that decision to the Mecklenburg County Building Code Appeals Board ("County appeals board"), which ruled to uphold the building official's decision.

Ephesus then further appealed to the Review Board.

III. FINDINGS OF THE REVIEW BOARD

The USBC requirement in question is set out below:

903.2.1.3 Group A-3. An automatic sprinkler system shall be provided for Group A-3 occupancies where one of the following conditions exists:

1. The fire area exceeds 12,000 square feet (1115 m²).
2. In Group A-3 occupancies other than churches, the fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than the level of exit discharge.

Exception: Areas used exclusively as participant sports areas where the main floor area is located at the same level as the level of exit discharge of the main entrance and exit.

The determination of whether Ephesus is required to install a sprinkler system in the family life center hinges on whether the family life center is considered to be a church¹.

While the use of the family life center, as noted by Ephesus, is for many of the same uses as the original church building, the design of the family life center appears to be more that of a multipurpose building than solely a church: it may be used in conjunction with the original church building, be used independently, be used by the community for indoor sports activities, be used as a place of preparing and serving large meals, or for other uses which may or may not be church related.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the building official and the County appeals board to be, and hereby is, upheld.



Chairman, State Technical Review Board

¹It is assumed that the family life center is being constructed as a separate building; however, there does not appear to be a fire wall or appropriate rated exterior wall separations between the existing church building and the family life center. If the family life center and the existing church are considered one building, then the sprinkler threshold has been exceeded. There was no record that this issue has been addressed by the building official, so the issue is not considered in this decision.

Aug. 20, 2010
Date Entered

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 W. Hodge, 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.

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Richard N. Clayton
Appeal No. 10-2

Hearing Date: June 18, 2010

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 the Virginia Statewide Fire Prevention Code (the "SFPC") and other regulations of the Department of Housing and Community Development. See §§ 27-98 and 36-114 of the Code of Virginia. Enforcement of the SFPC in other than state-owned buildings is by local city, county or town fire prevention agencies, if the local government has elected to enforce the SFPC. See § 27-98 of the Code of Virginia. An appeal under the SFPC is first heard by a local board of appeals and then may be further appealed to the Review Board. See § 27-98 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Richard N. Clayton ("Clayton"), owner of a multi-level condominium identified as Unit #300, 120 Roberts Lane, in the City of Alexandria, appeals a decision of the City of Alexandria SFPC official (the "fire official") that no SFPC violations are present in his unit or in the building in which his unit is located.

In September of 2009, Clayton requested the fire official to determine that his condominium unit and the unit below his were unsafe due to the lack of firestopping in a wall cavity used as a return air chase common to both units.

By letter in October of 2009, the fire official informed Clayton that no SFPC violations were present.

Clayton appealed the fire official's decision to the City of Alexandria Local Board of Building Code Appeals ("City SFPC board"), which is the authorized board to hear appeals from the application of both the Virginia Uniform Statewide Building Code (the "USBC") and the SFPC by the City's code enforcement department.

The City SFPC board heard Clayton's appeal in November of 2009 and ruled to uphold the fire official's decision. The final order of the City SFPC was issued in January of 2010.

Clayton then further appealed to the Review Board and after both parties were given the opportunity to submit supplemental

documents, a hearing was held before the Review Board, attended by both Clayton and the fire official.

III. FINDINGS OF THE REVIEW BOARD

Clayton's building was constructed prior to the implementation of the USBC and is known as a "pre-1973 building." Section 102.2 of the SFPC sets out the application of the SFPC to pre-1973 buildings and states as follows:

102.2 Application to pre-1973 buildings and structures. Buildings and structures constructed prior to the USBC (1973) shall comply with the maintenance requirements of the SFPC to the extent that equipment, systems, devices, and safeguards which were provided and approved when constructed shall be maintained. Such buildings, if subject to the state fire and public building regulations (Virginia Public Building Safety Regulations, VR 394-01-05) in effect prior to March 31, 1986, shall also be maintained in accordance with those regulations.

The fire official's decision, upheld by the City SFPC board, that there were no violations in Clayton's building was based on the wording in Section 102.2 which only requires equipment, systems, devices and safeguards which were provided and approved when constructed to be maintained. Since the building was constructed and approved under the building code in effect in the City of Alexandria at the time and since there were no maintenance issues, the fire official determined that the building was in compliance with Section 102.2.

Clayton argues that the use of the building wall cavity for a return air chase made the building an unsafe building under the SFPC because no firestopping between floors was provided and that action could be taken under the SFPC's unsafe building provisions. Clayton also provided excerpts from the Virginia Public Safety Regulations addressing firestopping.

The Review Board finds that the fire official is correct that the first part of Section 102.2 of the SFPC cannot be used as the basis for Clayton's building to be in violation of the SFPC as there is no lack of maintenance of any provided and approved equipment, systems, devices or safeguards.¹

The Review Board further finds that the second part of Section 102.2 requires Clayton's building to be maintained in accordance with the Virginia Public Building Safety Regulations ("VPBSR"). This requirement is copied verbatim from state law in § 27-97 of the Code of Virginia and is based on the requirements of the former "Public Building Safety Law" which required public buildings to comply with minimum standards promulgated by the State Corporation Commission and enforced by the State Fire Marshal's Office and local law enforcement officials. That authority transferred to the SFPC and state and local fire

¹ This finding is consistent with the Review Board's decision in Appeal No. 08-2, a prior appeal by Clayton concerning the application of the maintenance requirements of the USBC to his building where no violations were found.

officials when the Public Building Safety Law was repealed under Chapter 199 of the 1988 Acts of Assembly.

However, while Clayton's building is subject to the VPBSR and authority exists under the SFPC to compel compliance with the VPBSR, Clayton's building is not in violation of those regulations for the following reasons.

Sections 508 and 509 of the VPBSR address the protection of shaftways and ducts and are exceptions to the requirements for firestopping between floors. Both sections reference Subsection 404-2 for the requirements for interior stairways not part of the means of egress for the requirements for shaftways and for non-standard systems using ducts.

Subsection 404-2 of the VPBSR permits open stairways not part of the means of egress to connect two floors without any enclosure. In addition, enclosures for stairways connecting up to three floors are only required to have a ¼-hour fire resistance rating. This requirement is consistent with the requirements in Sections 508 and 509 of the VPBSR where in Section 508-2(e), only a ¼-hour fire resistance rating is necessary for the enclosures for shafts and in Section 509-1, no more than a ¼-hour fire resistance rating is required for enclosures for ducts.

Testimony and evidence was provided indicating that two layers of gypsum wallboard were enclosing the wall cavity used as the return air chase in Clayton's building, as it is part of the

wall separating Clayton's unit from a neighboring unit. This is consistent with the requirements of Section 505-2 of the VPBSR which requires a ¾-hour fire resisting partition to separate apartments. Two layers of gypsum wallboard was typical construction in pre-USBC buildings for a ¾-hour fire resisting partition.

Therefore, the wall cavity used as a return air chase in Clayton's building is in compliance with the shaft and duct requirements of the VPBSR and firestopping is not an issue. In addition, using the wall cavity of a building for a chase for the return air in a ventilation system is common practice and generally does not have to meet the same standards as for the ducts carrying the conditioned air through the duct system. Even the current USBC for newly constructed buildings recognizes the use of gypsum wallboard to form return air plenums and the use of wall cavities for limited return air plenums in Sections 602.2 and 602.3 of the International Mechanical Code.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the fire official and the decision of the City SFPC board that no SFPC violations are present in Clayton's building, to be, and hereby are, upheld.


Chairman, State Technical Review Board

Aug. 20, 2010
Date Entered

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 W. Hodge, 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.