

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

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

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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.<sup>1</sup>

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

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<sup>1</sup> 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 ¾-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 ¾-hour fire resistance rating is necessary for the enclosures for shafts and in Section 509-1, no more than a ¾-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.

/s/\*

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Chairman, State Technical Review Board

Aug. 20, 20100

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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.

**\*Note: The original signed final order is available from Review Board staff.**