

STATE BUILDING CODE TECHNICAL REVIEW BOARD

MEETING
March 21, 2014

GLEN ALLEN, VIRGINIA

Members Present

Mr. J. Robert Allen, Chairman
Mr. W. Keith Brower, Jr.
Mr. Vince Butler
Mr. J. Daniel Crigler
Mr. James R. Dawson
Mr. John H. Epperson
Mr. John A. Knepper, Jr.
Mr. James N. Lowe
Mr. Eric Mays
Ms. Patricia S. O'Bannon

Members Absent

Mr. R. Schaefer Oglesby, Vice-Chairman
Mr. Matthew Arnold
Mr. Joseph A. Kessler, III
Ms. Joanne D. Monday

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. James M. Flaherty, Assistant Attorney General in the Office of the Attorney General, was present and serving as the Board's legal counsel.

Mr. Emory Rodgers, Deputy Director of the Division of Building and Fire Regulation within the Virginia Department of Housing Community Development (DHCD), responded to inquiries from Board members concerning Vice-Chairman Oglesby advising that he was at home but undergoing what could be a lengthy physical therapy. Well wishes were offered all around and Mr. Rodgers advised that he would inform the Vice-Chairman of the Board members thoughts and condolences and that his participation on the Review Board is missed.

Approval of Minutes

Mr. Lowe moved to approve the minutes of the January 24, 2014 meeting as presented in the Review Board members' agenda package. The motion was seconded by Mr. Epperson and passed unanimously with Mr. Knepper and Ms. O'Bannon abstaining from the vote.

Public Comment The Chairman opened the floor for public comment. The Secretary reported that no one was preregistered. The Chairman closed the public comment period.

Final Orders Appeal of Rave Soccer, LLC; Appeal No. 13-5:

After review by the Board members, Mr. Epperson moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Dawson and passed unanimously with Mr. Knepper and Ms. O'Bannon abstaining from the vote.

Appeal of Stark Jones, LLC; Appeal No. 13-6:

During review, Mr. Dawson questioned the need for the statement in the final order concerning a recommendation for a compliance alternative review to be considered by the parties. Mr. Epperson suggested that while such a review would be appropriate and was discussed during the deliberations at the appeal hearing, it was not an issue before the Review Board in the appeal. After further discussion, Mr. Crigler moved to approve the final order as presented in the Review Board members' agenda package with the removal of the statement concerning a compliance alternatives review. The motion was seconded by Mr. Butler and passed unanimously with Mr. Knepper and Ms. O'Bannon abstaining from the vote.

New Business Appeal of Milari Madison; Appeal Nos. 13-3, 13-7 and 14-2:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned the construction, installation and set-up of Ms. Madison's modular home at 40153 Janney Street, in Loudoun County. The home was constructed under the Virginia Industrialized Building Safety Regulations (IBSR); a regulation and related program administered by DHCD's State Building Codes Office (SBCO).

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

Milari Madison
Cindy Davis, SBCO
Eric Leatherby, SBCO

New Business

Appeal of Milari Madison; Appeal Nos. 13-3, 13-7 and 14-2 (continued):

Also present was:

Mike Melis, Esq., legal counsel for the SBCO

Review Board staff advised the Chairman of a brief from the SBCO for Appeal No. 14-2 which was received after the timeframes established by staff for preparing the Review Board agenda package. Ms. Madison objected to the distribution of the brief. After consideration, the Chairman ruled not to distribute the brief.

After an explanation from Review Board staff concerning the delineation of the issues identified for resolution and with no objections from the parties, the Chairman indicated that each issue would be considered and deliberated separately.

The hearing then proceeded on the issue of whether the SBCO erred in determining that no violations of the IBSR existed relative to the floor system of the sunroom. After testimony concluded, the Chairman closed the hearing and deliberation of issue began. After discussion, Mr. Mays moved to uphold the decision of the SBCO since the sunroom was panelized and constructed on-site making it subject to Part I of the Virginia Uniform Statewide Building Code (the VCC), which is enforced by the local building department. The motion was seconded by Mr. Epperson and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed in the mating of the floor system to the foundation in the one-story den. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Mays moved to uphold the decision of the SBCO since the connection of the foundation to the home is regulated by the VCC. The motion was seconded by Mr. Crigler and passed unanimously.

New Business

Appeal of Milari Madison; Appeal Nos. 13-3, 13-7 and 14-2 (continued):

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed relative to size of the joist hangers used on the first floor joists. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Epperson moved to uphold the decision of the SBCO since end nailing was used to prevent rotation of the joists and the hangers used were properly sized for the loads. The motion was seconded by Mr. Mays and passed with Messrs. Crigler and Lowe voting in opposition.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed in the mating of the modules. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Mays moved to uphold the decision of the SBCO since the attachment of one module to another is site work subject to the VCC. The motion was seconded by Mr. Crigler and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed relative to the compliance assurance agency authorizing the labels to be affixed to the modules. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Dawson moved to uphold the decision of the SBCO since proper procedures were used in the issuance of the labels. The motion was seconded by Mr. Epperson and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed relative to the data plate. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Epperson moved to uphold the decision of the SBCO since the data plate correctly matched the factory-built aspects of the home. The motion was seconded by Mr. Dawson and passed with Mr. Brower and Ms. O'Bannon voting in opposition and Mr. Mays abstaining from the vote.

New Business

Appeal of Milari Madison; Appeal Nos. 13-3, 13-7 and 14-2 (continued):

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed due to inconsistencies between the plans and the actual construction. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Dawson moved to uphold the decision of the SBCO since the deviations from the plans did not create violations of the IBSR and are documented for the records for the home. The motion was seconded by Mr. Butler and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed relative to the roof's collar ties; hinged portions of the roof; an opening cut to the storage space above the master bedroom; and, the unevenness of the roof. After testimony concluded, the Chairman closed the hearing and deliberation of the issues began. After discussion, Mr. Mays moved to uphold the decisions of the SBCO due to the installation of collar ties and the hole to the storage space above the master bedroom being site work subject to the VCC and due to the lack of evidence that the hinged portions of the roof or the unevenness of the roof constituted structure problems. The motion was seconded by Mr. Crigler and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violations of the IBSR existed in the electrical service. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Knepper moved to uphold the decision of the SBCO since the electrical service was modified at the site. The motion was seconded by Mr. Lowe and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in not issuing any notices of violation to NTA, Inc., the compliance assurance agency responsible for third party inspections of the home. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. Lowe moved to uphold the decision of the SBCO since there was insufficient evidence that NTA, Inc. violated any of the provisions of the IBSR. The motion was seconded by Ms. O'Bannon and passed unanimously.

New Business

Appeal of Milari Madison; Appeal Nos. 13-3, 13-7 and 14-2 (continued):

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violation of the IBSR existed in the sizing of the floor joists under the kitchen. After testimony concluded, the Chairman closed the hearing and deliberation of the issue began. After discussion, Mr. May moved to uphold the decision of the SBCO since the load analysis provided by NTA, Inc. indicated compliance with the IBSR. The motion was seconded by Mr. Epperson and passed unanimously.

The Chairman then reopened the hearing for consideration of whether the SBCO erred in determining that no violation of the IBSR existed in relation to the approval of the plans and the placement of the seals and labels on the home. During testimony, Mr. Dawson moved that the issue was moot due to prior discussions and decisions. There was no opposition from the parties. The motion was seconded by Ms. O'Bannon and passed unanimously.

The Chairman then reopened the hearing for consideration of whether there were any other issues identified by Ms. Madison which were properly before the Review Board. After testimony concluded, the Chairman closed the hearing. After discussion, Mr. Mays moved that no further issues were properly before the Review Board. The motion was seconded by Ms. O'Bannon and passed unanimously with Mr. Dawson abstaining from the vote.

Secretary's Report

Mr. Flaherty discussed developments concerning Review Board Appeal No. 11-13; Appeal of Glenn Yates, Jr., which had been appealed to, and heard by, the City of Portsmouth Circuit Court. The Court had agreed to another hearing at the request of legal counsels for the City of Portsmouth building official and the Review Board seeking clarification of the Court's decision. A further proceeding is scheduled in May of 2014 for the Court to determine the wording of the order to be entered.

