

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of John A. Parrish and Maria P. Tungol
Appeal No. 13-8

Hearing Date: June 20, 2014

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 regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 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

The appellants (Parrish and Tungol) are the owners of an existing single family dwelling located at 5820 Fifer Drive, in Fairfax County. The dwelling is unoccupied or rental property and the owners reside in Pennsylvania.

In August of 2013, the Fairfax County Department of Code Compliance (FCDCC) inspected the property and subsequently issued a notice of violation under Part III of the Virginia Uniform Statewide Building Code (Virginia Maintenance Code, or VMC) citing VMC violations for the disrepair of a fence, the storm door at the front entrance, the front and side upper portions of the siding and roof and gutters.

Parrish and Tungol appealed the notice to the Fairfax County Board of Building Code Appeals (County appeals board), which after hearing, ruled to uphold FCDCC's citations. Parrish and Tungol further appealed to the Review Board.

III. FINDINGS OF THE REVIEW BOARD

By their choice, Parrish and Tungol were not present for either the County appeals board hearing or the hearing before the Review Board; however, they submitted written arguments challenging the validity of the citations. They argue that § 103.2 of the VMC only permits the citation of violations of the VMC if conditions are present which meet the definition in the VMC of an unsafe structure or a structure unfit for human habitation and that since the condition of their house does not qualify it as unsafe or unfit for habitation, the citations are invalid.

The text of § 103.2 is below:

"103.2 Maintenance requirements. Buildings and structures shall be maintained and kept in good repair in accordance with the requirements of this code and when applicable in accordance with the USBC under which such building or structure was constructed. No provision of this code shall require alterations to be made to an existing building or structure or to equipment unless conditions are present which meet the definition of an unsafe structure or a structure unfit for human occupancy."

With respect to the last sentence in § 103.2, the term "alteration" is defined in the VMC through a reference in § 201.3 to terms defined in other International Codes. The applicable definition for the term "alteration" is found in the International Building Code, in § 202, and the definition is below:

"Alteration. Any construction or renovation to an existing structure other than repair or addition."

The citations in the notice of violation issued by FCDCC are for the lack of maintenance of various aspects of the Parrish and Tungol house. To remedy or correct those citations, those aspects of the house identified need to be repaired. Consequently no alterations are required, as the term "alteration" is defined to exclude repair. Accordingly, the argument provided by Parrish and Tungol has no merit.

In addition, as outlined in prior decisions of the Review Board¹, § 103.2 of the VMC establishes that when a building was subject to any edition of the USBC when constructed, the

¹See the final order in Appeal of Betty C. Hill; Appeal No. 8-12.

expectation is that the building will maintained to continue to comply with the code in effect when the building was constructed. The last sentence in § 103.2 is an indirect reference to § 105.3 of the VMC where, aside from requiring buildings to be maintained, conditions not related to maintenance are addressed and alterations may be required to be made to buildings constructed prior to the USBC to remedy conditions that constitute a serious and dangerous hazard to life or health.

Finally, with respect to the citation issued by FCDCC for the lack of maintenance of the front and side upper portions of the siding, the Review Board notes that the siding material appeared from the pictures submitted to be of weather resistant material, and, if verified to be so, would not constitute a violation of the VMC for the lack of protective covering or treatment or for peeling paint.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the notice of violation issued by FCDCC to Parrish and Tungol, to be, and hereby is, upheld.

/s/*

Chairman, State Technical Review Board

Nov. 21, 2014

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.