

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Karen Lindsey
Appeal No. 18-07

DECISION OF THE REVIEW BOARD

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 (§ 2.2-4000 et seq. of the Code of Virginia).

Case History

On January 25, 2018, the home owned by William and Marjorie Lindsey located at 2445 Strawberry Lane in the City of Chesapeake caught fire. Karen Lindsey (Lindsey), daughter to the deceased owners and current resident of the property along with her two children, were displaced due to the extensive damage to the home. In February of 2018 Lindsey was certified as the Executor of the estate for the property. Lindsey, appealed the enforcement action by the City of Chesapeake, Development and Permits Department (City) under Part III of the Uniform Statewide Building Code (Virginia Maintenance Code).

On January 29, 2018, the City, in enforcement of the 2012 Virginia Property Maintenance (VMC), performed an inspection of the property. In early March of 2018 copies of the Notice of Unsafe Structure (Demolition), Demolition Authorization Form, City of Chesapeake Board of Building Code Appeals (local appeals board) application, Notice of Violation (NOV), Public

Notice, and Building Inspection Report for Unsafe Structure dated March 7, 2018 were stapled to the garage of the structure. Lindsey removed them from the structure and contacted the City for clarification of the documents. On March 29, 2018, Lindsey received copies of the above referenced documents along with an amended Building Inspection Report for Unsafe Structure dated March 26, 2018 via USPS certified mail. The same documents were posted on the structure by the City Sheriff's Department on March 30, 2018.

The local appeals board heard Lindsey's appeal on May 16, 2018 and ruled to uphold the decision of the City. In addition to upholding the City's decision the local appeals board gave Lindsey 30 days from the date of the hearing to obtain an engineer's report and contractor's agreement; 60 days to acquire the needed permits and 180 days to complete all repairs, request the required inspections and obtain a new Certificate of Occupancy (CO); and 270 days to obtain the new CO or have the property demolished. The local appeals board further stated that if the deadlines provided were not adhered to the City would demolish the structure without further notice. Lindsey agreed with the cited violations; however, she found the timeline unattainable and asked for an extension of the timeframes provided by the local appeals board; therefore, Lindsey further appealed to the Review Board.

A Review Board hearing was held on February 15, 2019. Appearing at the Review Board hearing for the City of Chesapeake were John King and Meredith Jacobi, legal counsel. Karen Lindsey and her two children, Alexis Lindsey and Pepper Wilson, attended on behalf of the Lindseys.

Findings of the Review Board

A. Whether or not the appeal was timely to the Review Board.

Lindsey argued that she emailed Review Board staff within the required timeframe to acquire the needed application; Lindsey expressed her desire to appeal the decision of the City in that email. The City argued that in accordance with VMC section 106.8, the application must be made to the Review Board within 21 days. The City also argued that a copy of the Code Official's decision and the resolution from the local board of appeals must accompany the application. Lindsey argued that she requested the necessary information and documentation at the local appeals board hearing needed to further appeal to the Review Board. Lindsey further argued the City did not provide her with the needed guidance, pertinent information, complete contact information, or Review Board appeals application needed to properly file an appeal to the Review Board. The City argued that it was not the responsibility of the City to provide Lindsey with the needed application form; however, the City did provide Lindsey with the link to the location of the Review Board appeals application located on the Department of Housing and Community Development, State Building Codes Office (SBCO) website and Review Board staff email addresses. The City also argued that Lindsey should have emailed Review Board staff sooner allowing ample time to receive the necessary application. Lindsey argued that she had limited access to technology due to being displaced from her home since the fire.

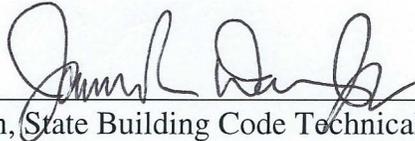
The Review Board did not agree with the City that the LBBCA resolution was adequate. The Review Board finds the local appeals board resolution did not provide the required language in accordance with the VMC Section 106.7 which reads:

“Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150.”

The Review Board further finds that the information provided to Lindsey was outdated and referenced Review Board staff that retired nearly a year ago.

Final Order

For the reasons set out herein, the Review Board orders the appeal to be, and hereby is, remanded to the local appeals board to re-issue its decision in a manner and form that complies with the 2012 VMC Section 106.7 because the prior resolution did not comply.



Chairman, State Building Code Technical Review Board

Date entered: March 15, 2019

Certification

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 W. Travis Luter, Sr., 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.