AGENDA
STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, July 16, 2021 - 10:00am
Henrico County Tuckahoe Area Library
1901 Starling Drive Henrico, Virginia 23229

I. Roll Call (TAB 1)

II. Approval of May 21, 2021 Minutes (TAB 2)

III. Approval of Final Order (TAB 3)

In Re: Monica and Michael Davis
Appeal No 21-02

IV. Approval of Final Order (TAB 4)

In Re: Anthony T. Grant, Jr.
Appeal No 21-03

V. Public Comment

VI. Secretary’s Report

   a. September 2021 meeting update
STATE BUILDING CODE TECHNICAL REVIEW BOARD

James R. Dawson, Chair  
(Virginia Fire Chiefs Association)

W. Shaun Pharr, Esq., Vice-Chair  
(The Apartment and Office Building Association of Metropolitan Washington)

Vince Butler  
(Virginia Home Builders Association)

J. Daniel Crigler  
(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

Alan D. Givens  
(Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America)

David V. Hutchins  
(Electrical Contractor)

Christina Jackson  
(Commonwealth at large)

Joseph A. Kessler, III  
(Associated General Contractors)

Eric Mays  
(Virginia Building and Code Officials Association)

Joanne D. Monday  
(Virginia Building Owners and Managers Association)

J. Kenneth Payne, Jr., AIA, LEED AP BD+C  
(American Institute of Architects Virginia)

Richard C. Witt  
(Virginia Building and Code Officials Association)

Aaron Zdinak, PE  
(Virginia Society of Professional Engineers)

Vacant  
(Commonwealth at large)
Members Present

Mr. James R. Dawson, Chairman
Mr. W. Shaun Pharr, Esq., Vice-Chairman
Mr. Vince Butler
Mr. Alan D. Givens
Mr. David V. Hutchins
Ms. Christina Jackson
Mr. Joseph Kessler
Mr. Eric Mays, PE
Mr. J. Kenneth Payne, Jr., AIA
Mr. Richard C. Witt
Mr. Aaron Zdinak, PE

Members Absent

Mr. Daniel Crigler
Ms. Joanne Monday

Call to Order

The meeting of the State Building Code Technical Review Board (“Review Board”) was called to order at approximately 10:00 a.m. by Secretary Travis Luter.

Roll Call

The roll was called by Mr. Luter and a quorum was present. Mr. Justin I. Bell, legal counsel for the Board from the Attorney General’s Office, was also present.

Approval of Minutes

The draft minutes of the March 19, 2021 meeting in the Review Board members’ agenda package were considered. Mr. Payne moved to approve the minutes as presented. The motion was seconded by Ms. Jackson and passed unanimously.

The draft minutes of the April 16, 2021 meeting in the Review Board members’ agenda package were considered. Mr. Payne moved to approve the minutes as presented. The motion was seconded by Ms. Jackson and passed with Messrs. Butler, Givens, Hutchins, and Witt abstaining.

Final Order

Appeal of Fairfax County: Appeal No. 21-01:

After review and consideration of the final order presented in the Review Board members’ agenda package, Mr. Payne moved to approve the final order as presented. The motion was seconded by Mr. Witt and passed unanimously.
Public Comment  
Chair Dawson opened the meeting for public comment. Mr. Luter advised that no one had contacted him to speak. With no one requesting to speak, requesting to be acknowledged to speak by use of the raised hand feature of the Adobe Connect meeting platform, or requesting to speak in the chat box section of the Adobe Connect meeting platform, Chair Dawson closed the public comment period.

New Business  
Monica and Michael Davis; Appeal No. 21-02:

A hearing convened with Chair Dawson serving as the presiding officer. The hearing was related to the home located at 1002 Round Hill School Road in Augusta County.

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

  Monica Davis, Property Owner  
  Michael Davis, Property Owner  
  G. W. Wiseman, Augusta County Building Official

After testimony concluded, Chair Dawson closed the hearing and stated a decision from the Review Board members 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: Monica and Michael Davis; Appeal No. 21-02:

Motion #1
After deliberations, Mr. Mays moved to uphold the local building official and local appeals board acceptance of the Schnitzhofer Structural Engineers report dated November 3, 2020 as a valid engineers report. The motion was seconded by Mr. Witt.

After further deliberations, Mr. Payne moved to substitute for the pending motion the following: To uphold the local building official and local appeals board to accept the Schnitzhofer Structural Engineers report dated November 3, 2020 as a valid engineers report with the exemption of items #8 and #12 in the letter from the local building official dated July 16, 2020. Mr. Payne further moved to overturn the local building official and local appeals board acceptance of the Schnitzhofer Structural Engineers report dated November 3, 2020 as a valid engineers report for items #8 and #12 in the letter from the local building official dated July 16, 2020. The substitute was seconded by Mr. Mays.
After additional deliberation, the substitute was withdrawn. The original motion by Mr. Mays was also withdrawn.

Motion #2
After further deliberations, Mr. Kessler moved to uphold the local building official and local appeals board acceptance of the Schnitzhofer Structural Engineers report dated November 3, 2020 as a valid engineers report for the letter from the local building official dated July 16, 2020. Mr. Kessler further moved that the report did not resolve any issues identified in the letter from the local building official dated July 16, 2020. Mr. Kessler further moved that the Engineering Solutions report was also a valid report for the letter from the local building official dated July 16, 2020. The motion was seconded by Mr. Payne and passed unanimously.

Anthony T. Grant, Jr.; Appeal No. 21-03:

A hearing convened with Chair Dawson serving as the presiding officer. The hearing was related to the home located at 4281 Cole Avenue in the City of Suffolk.

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

Anthony T. Grant, Jr., Property Owner
Ashley Grant, Property Owner
Michael Robinson, City of Suffolk Building Official
Jeffery Sadler, Witness for the City of Suffolk
Carl Stevens, Witness for the City of Suffolk

Also present was:

Sean Dolan, legal counsel for the City of Suffolk

After testimony concluded, Chair Dawson closed the hearing and stated a decision from the Review Board members 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: Anthony T. Grant, Jr.; Appeal No. 21-03:

Item #1
After deliberations, Mr. Mays moved that the City of Suffolk local appeals board did not comply with the Remand Order dated January
11, 2019. The motion was seconded by Mr. Kessler and passed unanimously.

Item #2
After further deliberations, Mr. Givens moved that the city of Suffolk building official is to provide complete manual J, and D calculations based on the original plans with corrected orientation, and adjustments made for missing and new windows applied to them. The city of Suffolk building official is also to provide all the backup documentation including but not limited to wall construction type, glazing and door details, insulation validating the data contained in the new Manual J and D calculations of the home not on the as built as this could require destructive testing. Once the accurate manual J and D calculations are completed, then see, in particular, if the system meets these requirements by testing air flow to each room, and if the BTU values of the current system meets the requirements of the structure. The city of Suffolk building official should also issue NOV’s for the other issues contributing to the comfort issues that were identified such as but not limited to sealing registers, and vapor barrier issues in the crawl space. The city of Suffolk building official shall also provide all of the supporting documents and completed manual J and D calculations to the State Technical Code Review Board. The motion was seconded by Mr. Pharr and passed with Messrs. Butler and Hutchins and Ms. Jackson voting in opposition.

Secretary’s Report
Mr. Luter informed the Board of the current caseload for the upcoming meeting scheduled for July 16, 2021.

Attorney Bell provided legal updates to the Board.

Adjournment
There being no further business, the meeting was adjourned by proper motion at approximately 5:00 p.m.

Approved: July 16, 2021

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Chairman, State Building Code Technical Review Board

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Secretary, State Building Code Technical Review Board
BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Monica and Michael Davis
Appeal No. 21-02

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

II. Case History

On March 27, 2020, the County of Augusta Department of Community Development (County Building Official), the agency responsible for the enforcement of Part 1 of the 2012 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), issued the Certificate of Occupancy to Monica and Michael Davis (Davis), for a single-family dwelling located at 1002 Round Hill School Road, in Augusta County.

Shortly after moving into their new home, Davis contacted the County Building Official requesting he come inspect a variety of issues and concerns they had with their home, attached garage, and detached garage.

In June and July of 2020, the County Building Official visited the Davis property several times investigating the issues brought forth by Davis. During one or more of these inspections, the County Building Official found several violations. On July 16, 2020, the County Building
Official issued a letter to Hendricks and Son General Contractor, LLC citing seventeen (17) code violations.

In September of 2020, Schnitzhofer Structural Engineers visited the Davis home to evaluate the residence with attached garage and detached garage related to the cited violations in the July 16, 2020 letter from the County Building Official. Schnitzhofer Structural Engineers drafted a letter dated November 3, 2020, which was received by Augusta County on November 9, 2020. The Schnitzhofer Structural Engineers letter was reviewed and accepted by the County Building Official.

Davis filed a timely appeal to the Augusta County Board of Building Code Appeals (local appeals board) for the acceptance and approval of the Schnitzhofer Structural Engineers letter. Davis further appealed to the local appeals board to consider the proposal report from Engineer Solutions and require the builder to approach the cited violations with the suggested analysis process set forth in that report. The local appeals board upheld the decisions of the County Building Official finding that the Schnitzhofer Structural Engineers report was a valid engineering report for the Davis’ structure. On February 1, 2021, Davis further appealed to the Review Board.

A virtual Review Board hearing was held May 21, 2021. Appearing at the Review Board hearing for Augusta County was G. W. Wiseman. Monica and Michael Davis attended the hearing on their behalf.

III. Findings of the Review Board

A. Whether to uphold the decision of the County Building Official and the local appeals board that the Schnitzhofer Structural Engineers report is a valid report for the Davis structure.

Davis argued that Schnitzhofer Structural Engineers were unable to provide an accurate report as many of the violations cited in the letter from the County Building Official dated July 16, 2020.
were in locations that were covered with drywall. Davis further argued that because the drywall was not removed, the cited violations had not been properly investigated; therefore, the report could not satisfy the issues as indicated in the County Building Official’s letter dated March 31, 2021. Davis further argued that without proper investigation the report could not provide the required engineer evaluation and design necessary for the repairs pursuant to the letter from the building official dated July 16, 2020. Davis also argued that the Engineer Solutions report provided a “clear-cut flawless” report as it was performed in conjunction with the removal of drywall for proper investigation, and provided the design for repair as required in the letter from the County Building Official dated July 16, 2020. Davis argued each individual violation cited in the letter from the County Building Official dated July 16, 2020.

The County argued that the Schnitzhofer Structural Engineers report was a valid report for the letter from the County Building Official dated July 16, 2020. The County further argued that the Schnitzhofer Structural Engineers report fully resolved items #8 and #12 of the letter from the building official dated July 16, 2020. The County argued that the remaining items from the letter from the County Building Official dated July 16, 2020 could be resolved if the repairs were done in accordance with the instructions in the Schnitzhofer Structural Engineers report which the building official approved by approval of the report.

The Review Board agrees with the County and local appeals board that the Schnitzhofer Structural Engineers report is a valid report, but does not resolve any of the issues outlined in the July 16, 2020 letter from the County Building Official. The Review Board further finds that the Engineering Solutions report is also a valid report.

IV. Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:
A. Whether to uphold the decision of the County Building Official and the local appeals board that the Schnitzhofer Structural Engineers report is a valid report for the Davis structure.

The decision by the County Building Official and local appeals board that the Schnitzhofer Structural Engineers report is a valid report is upheld noting that the Engineering Solutions report, provided by the Davis’, is also a valid report.

Chair, State Building Code Technical Review Board

Date entered ____July 16, 2021_____

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.
BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Anthony T. Grant, Jr.
Appeal No. 21-03

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

II. Case History

In May of 2015, the City of Suffolk Planning and Community Development Office (City building official), the agency responsible for the enforcement of Part 1 of the 2009 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), issued a final inspection and a subsequent Certificate of Occupancy for a single-family dwelling at 4281 Cole Avenue in the City of Suffolk which was purchased by Ashley and Anthony T. Grant Jr. (Grant) in June of 2015.

Due to the lack of action by the City appeals board, on July 27, 2020 Grant, through his attorney, filed a Show Cause Order or Enforcement of Decision of the State Building Code Technical Review Board against the City appeals board, in the City of Suffolk Circuit Court. In January of 2021, the City appeals board again ruled to uphold the decision of the City building

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1 This case in not the first time the Review Board has seen these parties. Please see Review Board Appeal Case 18-10 which is attached as a supplement.
official that the heating and cooling system was sized properly. Grant further appealed to the Review Board stating that the City appeals board had not complied with the Review Board Remand Order dated January 11, 2019.

A virtual Review Board hearing was held May 21, 2021. Appearing at the Review Board hearing for the City of Suffolk were Michael Robinson, Jeff Sadler, Carl Stevens, and Sean Dolan, legal counsel for the city. Anthony and Ashley Grant attended the hearing on their behalf.

III. Findings of the Review Board

A. Whether the City appeals board complied with the Remand Order dated January 11, 2019

Grant argued the City appeals board did not comply with the Remand Order dated January 11, 2019, to provide the Manual S, J, and D calculations and other requisite information within 60 days. Grant further argued that he made many attempts via telephone calls and emails to discuss the matter with the City building official. Grant also argued that only after the filing of the Show Case Order, did the City building official respond. Grant further argued that the HVAC contractor, utilized by the City building official to conduct the required testing on his home, did not properly evaluated his home.

The City, through legal counsel, argued that following the recommendation of the Review Board, the City retained a third party contractor to evaluate the sizing of the HVAC system in its as built condition to provide the City appeals board additional information to be used to evaluate the HVAC system. The City further argued that all of the information the City acquired from the third party contractor indicated the HVAC was properly sized.

The Review Board agrees with Grant that the City appeals board did not comply with the Remand Order dated January 11, 2019. The Review Board further finds that there is still insufficient information present to make an informed decision and remands the appeal back to the
City building official to provide specific information and documentation for a better evaluation of the HVAC system.

IV. Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:

A. Whether the City appeals board complied with the Remand Order dated January 11, 2019

The City appeals board did not comply with the Remand Order dated January 11, 2019 and that the decision by the City building official and City appeals board that HVAC system is sized properly remains overturned.

Remand Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders this matter to be, and hereby is, remanded to the City building official to provide complete manual J, and D calculations based on the original plans with corrected orientation, and adjustments made for missing and new windows applied to them. The City building official is also to provide all the backup documentation including, but not limited to, wall construction type, glazing and door details, insulation validating the data contained in the new Manual J and D calculations of the home not on the as built as this could require destructive testing. Once the accurate manual J and D calculations are completed, then see, in particular, if the system meets these requirements by testing air flow to each room, and if the BTU values of the current system meets the requirements of the structure. The City building official should also issue NOV’s for the other issues contributing to the comfort issues that were identified such as but not limited to sealing registers, and vapor barrier issues in the crawl space. The City building official shall also provide
all of the supporting documents and completed manual J and D calculations to the State Technical Code Review Board.

Chair, State Building Code Technical Review Board

Date entered ______July 16, 2021__________

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.