AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, September 18, 2020 - 10:00am (Virtual Meeting)
https://vadhcd.adobeconnect.com/lbbca/

I. Roll Call (TAB 1)

II. Approval of July 17, 2020 Minutes (TAB 2)

III. Approval of Final Order (TAB 3)

   In Re: Kristie Sours Atwood
   Appeal No 19-05 and 19-06
   Buracker Construction
   Appeal No. 19-07

IV. Approval of Final Order (TAB 4)

   In Re: Culpeper County
   Appeal No 19-09

V. Approval of Final Order (TAB 5)

   In Re: ZAAKI Restaurant and Café LLC
   Appeal No 19-11

II. Public Comment

III. Appeal Hearing (TAB 6)

   In Re: Timothy Dolan
   Appeal No 20-01

IV. Interpretation (TAB 7)

   In Re: Modification for elevator, escalators, or similar conveyances

V. Secretary’s Report

   a. November 2020 meeting update
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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)

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
(Electrical Contractor)

Vacant
(Commonwealth at Large)
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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 Acting 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.

Elections of Officers

Mr. Luter advised the board members that the terms of the officers of the Board had expired and election of officers was needed prior to moving forward with the meeting. Mr. Luter then called for nominations for Chair. Mr. Witt nominated Mr. Dawson. The nomination was seconded by Ms. Monday. Mr. Luter called for nominations for Chair twice more. After hearing no further nominations, Mr. Luter closed the nominations for Chair. A vote was taken and Mr. Dawson was unanimously elected as Chair.

Chair Dawson called for nominations for Vice-Chair. Mr. Witt nominated Mr. Pharr for Vice-Chair. The nomination was seconded by Ms. Monday. Chairman Dawson called for additional nominations for Vice-Chair twice more; hearing none, he closed the nominations. A vote was taken and Mr. Pharr was unanimously elected as Vice-Chair.

Note: Mr. Kessler was unable to verbally vote due to a technical issue; however, he did cast his vote, Aye, via the chat box in the Adobe Connect platform.
Chair Dawson called for nominations for Secretary. Mr. Payne nominated Mr. Luter for Secretary. The nomination was seconded by Ms. Monday. Chairman Dawson called for additional nominations for Secretary twice more; hearing none, he closed the nominations. A vote was taken and Mr. Luter was unanimously elected as Secretary.

Approval of Minutes

The draft minutes of the January 24, 2020 meeting in the Review Board members’ agenda package were considered. Mr. Witt moved to approve the minutes with the editorial changes. The motion was seconded by Ms. Monday and passed with Messrs. Butler, Crigler, Kessler, and Payne abstaining.

Approval of Minutes

The draft minutes of the July 7, 2020 meeting in the Review Board members’ agenda package were considered. Mr. Butler moved to approve the minutes as presented. The motion was seconded by Ms. Monday and passed with Messrs. Crigler and Givens abstaining.

Final Orders

Appeal of Kristie Sours Atwood and Buracker Construction
Appeal Nos. 19-05; 19-06; and 19-07:

After review and consideration of the final order presented in the Review Board members’ agenda package, Mr. Payne moved to table the final order until the September 18, 2020 meeting to allow Review Board staff the opportunity to make the needed edits as discussed. The motion was seconded by Mr. Mays and passed unanimously.

Note: Mr. Crigler was unable to vote due to technical issues.

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 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

Preliminary Hearing (To discuss whether the appeal is properly before the Board)

Culpeper County; Appeal No. 19-09:

A preliminary hearing convened with Chair Dawson serving as the presiding officer. The preliminary hearing was related to the property owned by Patrick Sartori located at 9408 Breezewood Lane, in Culpeper County.

Mr. Witt recused himself from the hearing because he served on the Board of Housing and Community Development for many years with
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the Appellee, Anthony Clatterbuck. Mr. Witt left the virtual meeting. Mr. Witt will be notified by the Secretary at the conclusion this case to rejoin the meeting.

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

Patrick Sartori, Owner
Robert Orr, Culpeper County Building Official
Anthony Clatterbuck, Graystone Homes

Also present was:

Bobbi Jo Alexis, Esq., legal counsel for Culpeper County

After testimony concluded, Chair Dawson closed the preliminary 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: Preliminary Hearing (To discuss whether the appeal is properly before the Board)

Culpeper County; Appeal No. 19-09:

After deliberations, Mr. Mays moved to merge the preliminary hearing issues into the hearing for the merits of the case. The motion was seconded by Ms. Monday and passed unanimously.

After further deliberations, and agreement by Patrick Sartori, Mr. Mays moved to proceed with hearing of the three items before the Board with Mr. Sartori as a party to the appeal. Mr. Mays further moved that by doing so did not preclude Mr. Sartori’s future appeal. The motion was seconded by Mr. Payne and passed unanimously.

Appeal of Culpeper County; Appeal No. 19-09 (Merits):

A hearing convened with Chair Dawson serving as the presiding officer. The appeal involved citations under 2012 Virginia Construction Code related to the property owned by Patrick Sartori located at 9408 Breezewood Lane, in Culpeper County.
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The following persons were sworn in and given an opportunity to present testimony:

Patrick Sartori, Owner
Robert Orr, Culpeper County Building Official
Anthony Clatterbuck, Graystone Homes

Also present was:

Bobbi Jo Alexis, Esq., legal counsel for Culpeper County

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: Culpeper County; Appeal No. 19-09 (Merits):**

After deliberations, Mr. Mays moved to uphold the decision of the building official, and overturn the local appeals board, that a violation exists of VCC Section R403.1.8, pursuant to the Notice of Violation, found on page 43 of the agenda package. The motion was seconded by Ms. Monday and passed unanimously.

After further deliberations, Mr. Kessler moved that the local appeals board does have the authority to determine an engineer report is deficient and to require another independent test. The motion was seconded by Ms. Monday. Mr. Kessler withdrew his motion and Ms. Monday withdrew her second.

After further deliberations, Mr. Mays moved that specific to this case, the issue of whether the local appeals board could deem an engineer report deficient, and to require another independent test to be moot based on the previous decision of the Review Board to uphold the building official and overturn the local appeals board. The motion was seconded by Mr. Kessler and passed unanimously.

**Appeal of ZAAKI Restaurant and Cafe; Appeal No. 19-11:**

A hearing convened with Chair Dawson serving as the presiding officer. The appeal involved citations under 2012 Virginia Construction Code related to the property owned by Aaron and Mary Sampson, operating as ZAAKI Restaurant and Cafe LLC located at 6020 Leesburg Pike, in Fairfax County.
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The following persons were sworn in and given an opportunity to present testimony:

- Khalid El Tayeb, ZAAKI Restaurant and Café LLC
- Brian Foley, Fairfax County Building Official
- Michael C. Stevens, MCS Architects, PC
- Victoria Fitzgerald, Technical Assistant to the Building Official

Also present was:

- Sarah Silverman, Esq., legal counsel for Fairfax County
- Aristotelis A. Chronis, Esq., legal counsel for ZAAKI Restaurant and Café LLC

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: Appeal of ZAAKI Restaurant and Cafe; Appeal No. 19-11:**

After deliberations, Mr. Payne moved to uphold the decision of the local appeals board and the building official that violations of VCC Section 108 (Application for permit) and VCC Section 113.3 (Inspections) exist related to items listed as a through h of the staff document, found on page 123 of the agenda package and listed below. The motion was seconded by Mr. Butler and passed unanimously.

a. Change of use in accordance with VCC Section 103.2
b. Installation of an addition to the west side of the main structure and the subsequent enclosure of that addition from fabric to glass
c. Installation of a gas fired heater and exhaust fans
d. Installation of an addition to the rear of the main structure
e. Installation of an addition clad in wood structural panels on the rear of the main structure
f. Alterations to the interior of the main structure
g. Installation of canopies on the front and right side of the main structure
h. Installation of a wooden deck and bar with electrical and plumbing

After further deliberations, Mr. Payne moved to uphold the decision of the local appeals board and the building official to revoke the certificate of occupancy in accordance with VCC Section 116.3 due to repeated
(Page left blank intentionally)
violations dating back to 2012, which includes lack of application for appropriate permits and obtaining the certificate of occupancy or proper final inspections. The motion was seconded by Ms. Jackson and passed unanimously.

Interpretation Request of David Dunavan (Powhatan County); Interpretation Request No. 01-20;

An interpretation request from David Dunavan of Powhatan County was considered concerning the 2015 Virginia Residential Code (VRC), on Section R312.1.1 and whether guards are required along the open side of an unfinished attic or room truss; whether the answer would remain the same when the ceiling below has drywall installed, but the room remains unfinished. Additionally, are guards required along the walking path in attics that lead to an HVAC unit?

After deliberations, Mr. Witt moved to send the request back to the requestor with the direction to formulate a more specific question in an interpretative format. The motion was seconded by Ms. Jackson and passed unanimously.

Interpretation Request of Paul Snyder (Louisa County); Interpretation Request No. 02-20;

An interpretation request from Paul Snyder of Louisa County was considered concerning the 2015 Virginia Residential Code (VRC), on Tables R403.1(1), (2), and (3) and whether another table exists or text that provides direction to the minimum size for footings when there is no load-bearing center wall.

After deliberations, Mr. Mays moved that no interpretation was needed and directed DHCD staff to educate the building official on the question. The motion was seconded by Mr. Witt and passed unanimously.

Interpretation Request of David Dunavan (Powhatan County); Interpretation Request No. 04-20;

An interpretation request from David Dunavan of Powhatan County was considered concerning the 2015 Virginia Residential Code (VRC), on Section P2503.5.1 and 2015 Virginia Plumbing Code (VPC) Section 312.2 whether air could be used to test plastic piping.

After deliberations, Mr. Witt moved that no interpretation was needed because the answer is found in VRC P2503.5.1, and is very explicit and is not interpretive. The motion was seconded by Ms. Jackson and passed unanimously.
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Interpretation Request of Robert Orr (Culpeper County); Interpretation Request No. 05-20:

Review Board staff withdrew this interpretation request from the agenda in accordance with Review Board Policy #03.

Secretary’s Report

Mr. Luter directed the Board members to the draft copy of a Proclamation for Ms. O’Bannon found in the Review Board members’ agenda package. After review and consideration of the Proclamation, Ms. Jackson moved to approve the Proclamation as presented. The motion was seconded by Mr. Kessler and passed unanimously.

Mr. Luter informed the Board of the current caseload for the upcoming meeting scheduled for September 18, 2020. Chair Dawson suggested starting at 9:00 am if the meeting was held virtually.

Attorney Bell provided legal updates to the Board.

Mr. Payne provided an update to the Board related to his code change proposal.

Adjournment

There being no further business, the meeting was adjourned by proper motion at approximately 5:45 p.m.

Approved: September 18, 2020

____________________________________________________
Chairman, State Building Code Technical Review Board

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Secretary, State Building Code Technical Review Board
VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Kristie Sours Atwood
   Appeal No. 19-05
   Appeal of Kristie Sours Atwood
   Appeal No. 19-06
   Appeal of Buracker Construction
   Appeal No. 19-07

DECISION OF THE REVIEW BOARD
(For Preliminary Hearing as to Jurisdiction and Timeliness)
(For Hearing on the Merits of the Cases)

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

The three referenced cases presented to the Review Board for consideration at the January 24, 2020 meeting for Kristie L. Sours Atwood (Atwood) and Buracker Construction (Buracker) have not been merged and remain independent of each other; however, the three cases originate from the same nexus of facts. Accordingly, all three of the cases were brought before the Review Board at the same time for the sake of efficiency.

A. The Inspection of the Dwelling

In July of 2016, the County of Warren Department of Building Inspections (County building official), the agency responsible for the enforcement of Part 1 of the 2009 Virginia
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Uniform Statewide Building Code (Virginia Construction Code or VCC), issued a final inspection and a subsequent Certificate of Occupancy to Buracker, a licensed Class A contractor, for a single-family dwelling located at 1255 Pilgrims Way owned by Atwood.

Atwood believed there were multiple issues with her new home; therefore, in September of 2017, Atwood hired David Rushton of ABLE Building Inspection, Inc. (ABLE) to perform a home inspection. ABLE issued a new construction defect inspection report in December of 2017 identifying 126 defective items of which sixty eight (68) were identified as potential code violations. In March of 2018, at the request of Atwood, the County building official performed a re-inspection of the property subsequently issuing a Notice of Violation (NOV) to Buracker citing five (5) violations.

B. The First Local Appeals Hearings

In May of 2018, Atwood filed an appeal to the local appeals board asking the local board to review the remaining sixty three (63) potential code violations, listed in the ABLE report, not cited in the March 30, 2018 NOV. The local appeals board heard Atwood’s appeal and identified 12 additional violations from the ABLE report. Atwood further appealed to the Review Board the remaining fifty one (51) potential violations listed in the ABLE report that were not cited by the county building official.

Subsequent to the June 7, 2018 decision of the local appeals board, the County building official issued a second NOV that was dated June 13, 2018 citing the 12 violations identified in the local appeals board decision. On June 28, 2018, Buracker filed an appeal to the local appeals board of the 12 violations cited in the June 13, 2018 NOV.¹ The local appeals board has six (6) total members. Of those six (6) members, at least two (2) members worked as contractors on

¹ This was the second of the two hearings before the local appeals board.
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Atwood’s dwelling that is the subject of this appeal. One of the members, Buracker, recused himself from the hearings. The other member, who also was a contractor on the Atwood dwelling, participated in the hearings and was the chair of the local appeals board during one of the hearings.

The local appeals board heard the appeal on July 26, 2018 whereby the local appeals board overturned six of the violations and upheld the other six violations. On August 10, 2018, Atwood further appealed the six cited violations overturned by the local appeals board to the Review Board. On August 17, 2018, Buracker further appealed to the Review Board the six cited violations upheld by the local appeals board.  

Review Board staff conducted an informal fact-finding conference (IFFC) in August of 2018 attended by all parties. Subsequent to the August 2018 informal fact-finding conference, Review Board staff processed the Atwood Appeals (Appeal Nos. 18-08 and 18-12) and the Buracker Construction Appeal (Appeal No. 18-13).

C. The First Review Board Hearing

All three (3) appeals, Atwood Nos. 18-08 and 18-12, and Buracker Construction No. 18-13, were presented to the Review Board for consideration at the January 11, 2019 Review Board meeting. The Review Board remanded all three appeals back to the local appeals board and ordered that the potential conflict of interest issue be addressed. The Review Board ordered that all local appeals board members that participated in the hearings for these cases to seek written opinion from the Warren County Commonwealth’s Attorney, or a formal opinion from the Virginia Conflict of Interest and Ethics Advisory Council (COIA Council), whether their participation in the proceedings to that point constituted a violation of State and Local Government Conflict of Interest Act (COIA). The Review Board further ordered that for any of the three cases

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2 At the August 17, 2018, local appeals board hearing Atwood asserted that a conflict of interest existed and objected to the members involved participating in the hearing.
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(Nos. 18-08, 18-12, and 18-13) where local appeals board members are advised by either the Commonwealth’s Attorney or the COIA Council that they have a conflict of interest or might have already committed a COIA violation, the local appeals board is to re-hear the case on its merits after members with conflicts recuse themselves in accordance with the Uniform Statewide Building Code (USBC) and COIA.

D. The Local Appeals Re-Hearings

On July 18, 2019, the local appeals board re-heard LBBCA Appeal No. 1-2018, filed by Atwood. Mr. George Cline did not sit on the panel hearing the appeal due to a conflict of interest. The attorney for Buracker Construction filed a “Memorandum in Opposition of Appeal Number 1-2018”, where he pointed out three potential jurisdictional issues related to timeliness, jurisdiction, and authority of the local appeals board. The local appeals board identified six (6) code violations. The new local appeals board decision vacated the June 7, 2019 local appeals board decision, and subsequently, the June 13, 2018 NOV and LBBCA Appeal 2-2018 by Buracker Construction as it was an appeal of the June 13, 2018 NOV. In the new decision for Appeal No. 1-2018, the local appeals board erroneously referenced the vacated June 13, 2018 NOV. Atwood further appealed to the Review Board the remaining sixty three (63) potential violations listed in the ABLE report that were not cited by the local appeals board.

Buracker filed a new appeal to the local appeals board. The local appeals board heard LBBCA Appeal No. 1-2019, on September 10, 2019, and upheld five (5) identified violations and overturned one (1) identified violation of its new decision of Appeal No. 1-2018. In the decision for Appeal No. 1-2019, the local appeals board erroneously referenced vacated Appeal 2-2018. On July 29, 2019, Atwood further appealed to the Review Board the one (1) identified violation
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overturned by the local appeals board. On October 7, 2019, Buracker further appealed to the
Review Board the five (5) identified violations upheld by the local appeals board.

Review Board staff conducted an informal fact-finding conference (IFFC) on November
7, 2019 attended by all parties. Subsequent to the November 7, 2019 informal fact-finding
conference, Review Board staff processed the Atwood Appeals (Appeal No. 19-05 and 19-06) and
the Buracker Construction Appeal (Appeal No. 19-07).

III. Findings of the Review Board

A. Whether the appeal was timely for the Atwood Appeals (Appeal Nos. 19-05 and 19-06).

Buracker, through legal counsel, argued that Atwood did not file the appeal within the
required thirty (30) day timeframe provided in the VCC. Buracker further argued that the County
building official, after re-inspection, only cited the five (5) violations present and that no other
violations existed.

The County building official argued that Atwood did not file the appeal within the required
thirty (30) day timeframe provided in the VCC.

Atwood argued that the County building official’s decision not to cite additional violations
was an action of the County building official; thus was appealable. Atwood further argued that
she received the decision of the County building official via United States Postal Service on April
12, 2018 and filed her appeal on May 3, 2018, which was within the timeframe provided in the
VCC.

The Review Board finds the appeal to be untimely because the lack of citing additional
violations during the March 2018 inspection, identified as potential violations in the ABLE report,
did not constitute a new decision, rather was an affirmation of the application of the code when
the Certificate of Occupancy was issued in July 2016.
B. Whether the appeal is properly before the Board for the Buracker Construction Appeal (Appeal No. 19-07).

Buracker, through legal counsel, argued that with the decision of the Review Board to dismiss the Atwood appeals (Appeal Nos. 19-05 and 19-06), Buracker Construction appeal (Appeal No. 19-07) no longer had any issues to appeal. Buracker further argued that all of the violations in the Buracker Construction appeal (Appeal No. 19-07) had been dismissed with the dismissal of the Atwood appeals (Appeal Nos. 19-05 and 19-06); thus, Buracker Construction appeal (Appeal No. 19-07) was no longer properly before the Board. The County building official made no argument. Atwood made no argument.

The Review Board finds the appeal to be properly before the Board because the County building official applied the code by issuing a NOV on June 13, 2018; therefore, the merits of the case are to be heard.

C. Merits of the Buracker Construction Appeal (Appeal No. 19-07).

1) Whether item #11 of the ABLE Building Inspection, Inc. report is a violation of VCC Section R502.2.2.2.

Buracker, through legal counsel, argued that all construction on the porch post and beam was done in compliance with the 2009 VCC. Buracker clarified that the construction work performed was to move the porch post, at the owner’s request, and was done after the issuance of the Certificate of Occupancy.

The County building official argued that the construction on the porch post and beam was a violation. The County building official confirmed that the construction work performed was done after the issuance of the Certificate of Occupancy. Atwood argued that the construction on the porch post and beam was a violation.

3 Buracker, through legal counsel, chose not to withdraw the appeal, but rather to argue that the appeal was no longer ripe.
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The Review Board agrees with the County and the local appeals board and finds that violations of VCC Section R502.2.2.2 exist.

2) Whether item #12 of the ABLE Building Inspection, Inc. report is a violation of VCC Section R502.6.

Buracker, through legal counsel, argued that all construction on the post and beam was done in compliance with the 2009 VCC. Buracker clarified that the construction work performed was to move the porch post, at the owner’s request, and was done after the issuance of the Certificate of Occupancy.

The County building official argued that the construction on the porch post and beam was a violation. The County building official confirmed that the construction work performed was done after the issuance of the Certificate of Occupancy. Atwood argued that the construction on the porch post and beam was a violation.

The Review Board agrees with the County and the local appeals board and finds that violations of VCC Section R502.6 exist.

3) Whether item #23 of the ABLE Building Inspection, Inc. report is a violation of VCC Table R301.5.

Buracker, through legal counsel, argued that the guard system was constructed in compliance with the 2009 VCC. Buracker also argued that the deck was less than 30” from grade; thus, the guards were not required. Buracker further argued that the guards were tested, by the County building official, and passed.

The County building official argued that a violation existed because the guard system did not meet the required 200lb live load and certified design professional testing was required.
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Atwood argued that the fasteners used to attach the porch posts to the deck floor were not code compliant. Atwood also argued that the top rails of the porch were secured with finish nails and loose. Atwood further argued that the post columns were loose and not properly secured.

The Review Board agrees with the County and the local appeals board and finds that violations of VCC Section Table R301.5 exist.

4) **Whether item #92 of the ABLE Building Inspection, Inc. report is a violation of VCC Sections R1005.1, R1005.2, R1005.3, R1005.4, and/or R1005.5.**

Buracker, through legal counsel, argued that the fireplace and chimney systems match per the manufacturers installation instructions. Buracker further clarified that the proper chimney was installed on the fireplace that was installed.

The County building official argued that he could not testify, with certainty, that the chimney pipe at the bottom, near the fireplace, met the Underwriters Laborites (UL) requirements due to his inability to see the chimney pipe within the wall at this time; therefore, evidence that the chimney piping met the requirements was required.

Atwood argued that Buracker did not install the fireplace unit that was ordered and that a different fireplace was installed.

The Review Board agrees with Buracker Construction and finds that violations of VCC Sections R1005.1, R1005.2, R1005.3, R1005.4, and/or R1005.5 do not exist.

5) **Whether item #101 of the ABLE Building Inspection, Inc. report is a violation of VCC Section R302.12.**

Buracker argued that neither VCC Section R302.12 nor any other code applied to the any condition within the cited area. Buracker further argued that fire separation and draftstopping was not required between the garage and attic above; thus, the installation of the attic access was not a code violation. Buracker also argued that the wall between the garage and house was properly
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separated with drywall and the proper access panel was installed. Buracker, through legal counsel, argued that the ABLE report was completed more than a year after the issuance of the Certificate of Occupancy and further that Buracker had no way of knowing what had changed inside the house since the issuance of the Certificate of Occupancy.

The County building official argued that the panel cover needed to be installed to be code compliant.

Atwood argued that Buracker installed the attic access in the garage after the issuance of the Certificate of Occupancy. Atwood also argued that access cover was plastic and was a code violation.

The Review Board agrees with Buracker Construction and finds that violations of VCC Section R302.12 do not exist.

IV. Final Order

A. Whether the appeal was timely for the Atwood Appeals (Appeal Nos. 19-05 and 19-06).

The appeals for Atwood (Appeal Nos. 19-05 and 19-06) having been given due regard, and for the reasons set out herein, the Review Board orders the appeal to be dismissed.

B. Whether the appeal is properly before the Board for the Buracker Construction Appeal (Appeal No. 19-07).

The appeal for Buracker Construction (Appeal No. 19-07) having been given due regard, and for the reasons set out herein, the Review Board order the appeal to be properly before the Board and that the merits of the appeal be heard.

C. Merits of the Buracker Construction Appeal (Appeal No. 19-07).
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The appeal having been given due regard, after considering the arguments of the parties and the evidence in the record, and for the reasons set out herein, the Review Board orders as follows:

1) Whether item #11 of the ABLE Building Inspection, Inc. report is a violation of VCC Section R502.2.2.2.

The decision of County building official and the local appeals board that a violation of VCC Section R502.2.2.2 exists is upheld.

2) Whether item #12 of the ABLE Building Inspection, Inc. report is a violation of VCC Section R502.6.

The decision of County building official and the local appeals board that a violation of VCC Section R502.6 exists is upheld.

3) Whether item #23 of the ABLE Building Inspection, Inc. report is a violation of VCC Table R301.5.

The decision of County building official and the local appeals board that a violation of VCC Table R301.5 exists is upheld.

4) Whether item #92 of the ABLE Building Inspection, Inc. report is a violation of VCC Sections R1005.1, R1005.2, R1005.3, R1005.4, and/or R1005.5.

The decision of County building official and the local appeals board that a violation of VCC Section R1005.1, R1005.2, R1005.3, R1005.4, and/or R1005.5 exists is overturned.

5) Whether item #101 of the ABLE Building Inspection, Inc. report is a violation of VCC Section R302.12.

The decision of County building official and the local appeals board that a violation of VCC Section R302.12 exists is overturned.
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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.
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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Culpeper County
Appeal No. 19-09

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

The Culpeper County Building Official appealed the decision of the Joint Board of Building Code Appeals of the Town and County of Culpeper (local appeals board), which overturned the enforcement action by the Culpeper County Building Department (County) under Part I of the 2012 Uniform Statewide Building Code (Virginia Construction Code or VCC) at the property owned by Patrick Sartori, located at 9408 Breezewood Lane, and located in Culpeper County. The dwelling was constructed by Graystone Homes (Graystone), a licensed Class A contractor.

On August 2, 2019, the County issued a Code Deficiency Notice (Notice) to Graystone for the dwelling located at 9408 Breezewood Lane. The Notice was issued due to the evidence of expansive soils, provided to the County in an engineering report by Sartori on June 6, 2019, and cited a violation of VCC Section R403.1.8 (Foundations and expansive soils).
(Page left blank intentionally)
In September of 2019, Graystone filed an appeal to the local appeals board. The local appeals board granted the appeal, rejecting the soil report provided to the County, because the soils report did not contain the test locations on the property, the exact distance from the structure, or the depth from which the samples were collected. The local appeals board further ruled that another independent soils test should be conducted.

On October 11, 2019, Robert Orr (Orr), Culpeper County Building Official, further appealed to the Review Board. A virtual Review Board hearing was held July 17, 2020. Appearing at the Review Board hearing for Culpeper County were Robert Orr and Bobbi Jo Alexis, legal counsel. Anthony Clatterbuck of Graystone Homes and Patrick Sartori, property owner, also attended the hearing.

III. Findings of the Review Board

A. Whether the local appeals board had the authority to determine an engineering report, approved by the County building official, was deficient.

B. Whether the local appeals board had the authority to find the sole remedy for the appeal was to conduct another independent test to confirm or deny the results of the original test.

C. Whether to uphold the decision of the County building official and overturn the local appeals board that a violation of the VCC Section R403.1.8 (Foundations and expansive soils) exists.

The County argued that shortly after the completion of Sartori’s home, he approached the County about a few matters of concern with his home, one of which was the possibility of expansive soils on the site. Sartori provided the County with an engineering report confirming expansive soils were present. The County argued that after review of the engineering report, the County felt there was enough evidence to warrant issuing a Notice and further investigation of the soils to see if any additional measures were needed. During its arguments, the County clarified
(Page left blank intentionally)
that the County policy, based on the soils maps the County relies on which did not indicate the site was indicative of expansive soils, did not require soil testing prior to issuance of permits. The County further clarified that it was unsure of whether the local appeals board had acted within the scope of its authority when ruling on the validity of the engineering report provided to the County or its direction that another independent test should be performed.

Graystone argued that substantial issues existed in the engineering report, provided by Sartori and relied on by the County, such as, the method of collection of the soil samples as well as the location and depth at which the soil samples were taken. Graystone further argued that the engineering report referenced the incorrect code under which the home was constructed. Graystone also challenged the competence of the lab that conducted the tests in his arguments. Graystone argued that because the soils test contained several flaws a new test was merited. Graystone also argued that the local appeals board had the authority to determine the validity of the engineering report and made the appropriate decision to find the report deficient and require that another independent test should be performed.

Sartori argued that the engineering report he provided to the County was adequate, accurate, and clearly depicted the conditions present at his home. Sartori also argued that there is no difference in the 2012 and 2015 codes related to expansive soils.

All parties acknowledged that expansive soils exists on the property and that some of the expansive soil issues have already been addressed by Graystone.

The Review Board agrees with the County in its acceptance of the engineering report. The Review Board finds that expansive soils do exist at the property and that a violation of VCC Section R403.1.8 still exists. The Review Board also finds that the questions of whether the local appeals board had the authority to determine an engineering report, approved by the County building official, was deficient and whether the local appeals board had the authority to find the
(Page left blank intentionally)
sole remedy for the appeal was to conduct another independent test to confirm or deny the results of the original test to be moot.

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 local appeals board had the authority to determine an engineering report, approved by the County building official, was deficient.

The decision of the local appeals board to determine the engineering report approved by the County building official was deficient is moot.

B. Whether the local appeals board had the authority to find the sole remedy for the appeal was to conduct another independent test to confirm or deny the results of the original test.

The decision of the local appeals board to require another independent test to confirm or deny the results of the original test is moot.

C. Whether to uphold the decision of the County building official and overturn the local appeals board that a violation of the VCC Section R403.1.8 (Foundations and expansive soils) exists.

The decision of the County that a violation of VCC Section R403.1.8 is upheld and the decision of the local appeals board is overturned.
(Page left blank intentionally)
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.
IN RE: Appeal of ZAAKI Restaurant and Café LLC
Appeal No. 19-11

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 November 8, 2019, the Fairfax County Land Development Services Department (County), in enforcement of Part I of the 2015 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), issued a Legal Notice; Revocation of Certificate of Occupancy (Notice) to ZAAKI Restaurant and Café LLC (ZAAKI) for the building owned by Aaron and Mary Sampson, located at 6020 Leesburg Pike in Fairfax County. The Notice revoked the certificate of occupancy (CO) due to repeated violations of the VCC dating back to 2012.

The County performed inspections and research of the property between October 24, 2019 and November 1, 2019 and discovered several violations. The Notice cited the following violations of VCC Sections 108 and 113 related to permits that were required, work performed without the required permits, and the lack of minimum inspections being performed:

a. Change of use in accordance with VCC Section 103.2
b. Installation of an addition to the west side of the main structure and the subsequent enclosure of that addition from fabric to glass
On November 12, 2019, the County issued a Corrective Work Order (Work Order) further explaining all of the cited violations listed in the Notice.

In November of 2019, ZAAKI filed an appeal to the Fairfax County Board of Building Code Appeals (local appeals board). The local appeals board denied the appeal for lack of recognition of the VCC, lack of permits and inspections to document compliance, history of lack of compliance with the VCC, and no indication that the property would be brought into compliance if the appeal were upheld.

On December 20, 2019, ZAAKI further appealed to the Review Board. A virtual Review Board hearing was held July 17, 2020. Appearing at the Review Board hearing for Fairfax County were Brian Foley, Victoria Fitzgerald, and Sara Silverman, legal counsel. Appearing at the Review Board hearing for ZAAKI Restaurant and Café LLC were Khalid E. Tayeb, Michael Stevens, and Aristotelis Chronis, legal counsel.

III. Findings of the Review Board

A. Whether to uphold the decision of the County and the local appeals board that violations of VCC Section 108 (Application for permit) and 113.3 (Inspections) exist for the following:

1) Change of use in accordance with VCC Section 103.2
2) Installation of an addition to the west side of the main structure and the subsequent enclosure of that addition from fabric to glass
3) Installation of a gas fired heater and exhaust fans
4) Installation of an addition to the rear of the main structure
5) Installation of an addition clad in wood structural panels on the rear of the main structure
6) Alterations to the interior of the main structure
7) Installation of canopies on the front and right side of the main structure
8) Installation of a wooden deck and bar with electrical and plumbing

The County, through its legal counsel, Sara Silverman, argued that the cited violations exist and that the cited violations were discovered during its investigation conducted between October 24, 2019 and November 1, 2019. The County also argued that the cited violations were not time barred as discovery had not taken place prior to October 24, 2019, since a technical assistant of the building official had not enter the property or performed any inspections prior to that date. The County further argued that previous inspections, referred to by ZAAKI, had been conducted by a zoning and property maintenance investigator, which is not a technical assistant of the building official. Lastly, the County argued that a review of County records for the subject property found multiple abandoned permit applications, permit applications for permits that were never issued, and permits for areas that had been constructed or altered where no inspections had been performed.

ZAAKI, through its legal counsel, Aristotelis Chronis, argued that the County was aware of the cited violations as far back as 2015; however, had not issue a Work Order or NOV. ZAAKI further argued that the cited violations were time barred based on discovery of the cited violations as far back as 2015 and the fact that the County did not address the cited violations until October of 2019. ZAAKI acknowledged that some, if not all, of the cited violations exist. ZAAKI further acknowledge that several permits had been applied for but not issued for the property.

The Review Board agrees with the County and the local appeals board and finds that violations of VCC Sections 108 and 113.3 exist for items 1-8 listed herein.

B. Whether to uphold the decision of the County and the local appeals board to revoke the certificate of occupancy (CO), in accordance with VCC Section 116.3, due to repeated violations of the VCC dating back to 2012.
(Page left blank intentionally)
The County, through its legal counsel, Sara Silverman, argued that ZAAKI had repeated violations dating back to 2012 that had not been addressed; therefore, they applied VCC Section 116.3 and revoked the CO. The County also argued that the building code does not address the order in which Work Orders and Notices must be issued.

ZAAKI, through its legal counsel, Aristotelis Chronis, argued that the County revoked the CO due to repeated violations, which was not the case. ZAAKI further argued that the Work Order issued on November 12, 2019 only referenced one other Notice of Violation (NOV) dated May 2, 2013 for a single violation six years earlier. ZAAKI also argued that in November of 2019 the County did not issue a Work Order or NOV, rather went immediately to revocation of the CO. ZAAKI further argued that the Work Order was issued four days after the Notice and that the Work Order should have been issued prior to the Notice.

The Review Board agrees with the County and the local appeals board that the revocation of the CO was proper due to repeated violations dating back to 2012, which include the lack of application for appropriate permits and obtaining the necessary CO or final inspections.

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 and the local appeals board that violations of VCC Sections 108 (Application for permit) and 113.3 (Inspections) exist for the following:

1) Change of use in accordance with VCC Section 103.2
2) Installation of an addition to the west side of the main structure and the subsequent enclosure of that addition from fabric to glass
3) Installation of a gas fired heater and exhaust fans
4) Installation of an addition to the rear of the main structure
5) Installation of an addition clad in wood structural panels on the rear of the main structure
(Page left blank intentionally)
6) Alterations to the interior of the main structure
7) Installation of canopies on the front and right side of the main structure
8) Installation of a wooden deck and bar with electrical and plumbing

The decision of the County and local appeals board that violations of VCC Sections 108 and 113.3 exist is upheld.

B. Whether to uphold the decision of the County and the local appeals board to revoke the certificate of occupancy (CO), in accordance with VCC Section 116.3, due to repeated violations of the VCC dating back to 2012.

The decision of the County and local appeals board to revoke the CO due to repeated violations dating back to 2012 is upheld.

______________________________
Chair, State Building Code Technical Review Board

Date entered _____September 18, 2020_________

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.
VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Timothy Dolan
Appeal No. 20-01

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Timothy Dolan
Appeal No. 20-01

REVIEW BOARD STAFF DOCUMENT

Suggested Statement of Case History and Pertinent Facts

1. On April 10, 2020, Timothy Dolan, of Riverstone Development LLC (Dolan), filed an appeal to the Essex County Local Board of Building Code Appeals (local appeals board), for lack of action by the County Building Official (County), related to his application for permit for his 15.3 acre property located on Hobbs Hole Drive, in the town of Tappahannock. Dolan proposed to construct approximately 153 units, in multiples of 16-unit two story buildings, using the exception in VCC Section 903.2.8.

2. On May 12, 2020, Timothy Dolan (Dolan) further appealed to the Review Board.

3. On May 19, 2020, after review of Dolan’s application for appeal, Review Board staff contacted all parties seeking clarification on whether a local board of appeals hearing had occurred while also providing guidance on the ability of the County to convene electronically without a physical quorum present pursuant to the budget bill, further clarified in the Attorneys General’s opinion. After several conversations and the May 19, 2020 email communication with the parties, a local appeals board hearing was scheduled for June 3, 2020. Due to insufficient notice the local appeals board hearing was rescheduled for June 17, 2020.

4. Dolan further appealed to the Review Board, after receiving the decision of the local appeals board, on July 13, 2020.
(Page left blank intentionally)
Due to the nature of this appeal and the assertion of inaction by the County, Review Board staff created a timeline of events based on the submitted documents by all parties.

December 2019 – Essex Building Official and Robert Himmel agreed that VCC Section 903.2.8 applied to the proposed project (Page 12 of the Draft Record)

January 3, 2020 – Town of Tappahannock acknowledges that the municipal system cannot meet the sprinkler pressure or volume requirements for the proposed project; therefore, would require a tank and booster pump (Page 14 of the Draft Record)

January 9, 2020 – First request for the Building Official to apply the exception of VCC Section 903.2.8 eliminating the requirement to install an automatic sprinkler system (Page 15 of the Draft Record)

January 13, 2020 – Second request for the Building Official to apply the exception of VCC Section 903.2.8 eliminating the requirement to install an automatic sprinkler system (Page 65 of the Draft Record)

January 13, 2020 – Essex County Building Official opined that he thought the buildings would be better served by an automatic sprinkler system and recommended a study by and engineer who practices the design of these systems on a regular basis to determine if a sprinkler system would work for the proposed project (Page 16 of the Draft Record)

February 9, 2020 – J. L. Howeth P.C., engineer for the Dolans, provided calculations and design that the proposed project met the exception requirement of VCC Section 903.2.8 (Page 27 of the Draft Record)

February 13, 2020 – Town of Tappahannock confirmed that the municipal system could not guarantee water for the sprinkler system for the proposed project (Page 28 of the Draft Record)

February 27, 2020 – Essex County provided evidence that the municipal system was adequate and that the necessary pressure and flow existed via Hydrant Flow Test performed by eTec Fire Protection (Pages 29-31 and 104-105 of the Draft Record)

March 4, 2020 – Essex County Administrator instructs Dolan to submit plans that include a sprinkler system design consistent with NFPA 13R (Page 103 of the Draft Record)

March 5, 2020 – Dolan challenges the findings of the Hydrant Flow Test performed by eTec Fire Protection (Page 67-69 of the Draft Record)

March 8, 2020 – Dolan submitted a permit application (Page 139-142 of the Draft Record)

April 10, 2020 – Dolan filed an application for appeal to the Essex County Local Board of Building Code Appeals


June 12, 2020 – Permit application denied (Page 76 of the Draft Record)
June 17, 2020 - Essex County Local Board of Building Code Appeals hearing date (Page 75 of the Draft Record)
June 30, 2020 - Written decision of the Essex County Local Board of Building Code Appeals was signed and dated (Page 4 of the Draft Record)
July 13, 2020 – Dolan filed a second application for appeal to the Essex County Local Board of Building Code Appeals; this time with the needed written decision of the Essex County Local Board of Building Code Appeals

6. This staff document along with a copy of all documents submitted will be sent to the parties and opportunity given for the submittal of additions, corrections or objections to the staff document, and the submittal of additional documents or written arguments to be included in the information distributed to the Review Board members for the appeal hearing before the Review Board.

Suggested Issue for Resolution by the Review Board

1. Whether to uphold the decision of the local appeals board, that there was no decision made to appeal, based on the lack of a decision by the County Building Official on the applicability of VCC Section 903.2.8 (Group R).

If the Review Board overturns, the local appeals board then:

2. Whether adequate water, pressure, and/or flow is available at the proposed site.

3. Whether the exception of VCC Section 903.2.8 (Group R) applies to the project proposed by Timothy Dolan.
(Page left blank intentionally)
Basic Documents
(Page left blank intentionally)
Plan Review and Building Permit Application
DEPARTMENT OF BUILDING & ZONING
202 S Church Lane
P O Box 1079
Tappahannock, VA 22560
(804) 443-4951
(804) 445-8023 fax

PERMIT NUMBER: __________________________
Location of Building
Address: Habbs Hole Drive Zoning District R-4
or Between US Route 17/360 and White Oak streets
Subdivision __________________________ Lot __________ Block __________ Lot Size (sq. ft. and acre) ______________

Owner of Lot:
Name: Riverstone Development LLC
Address: 1500 Bridgetender Dr. Henrico State VA Zip 23233
Phone Number: (804) 517-6200 E-mail Address: donaldpropertiesevenzorn@

1. Type of Request – Check all/any that apply.
□ New Building □ Commercial □ Residential (see part 2) □ Industrial □ Other-Specify: Multi-family
□ Addition to Existing Building or:
□ Alteration □ Repair/Replacement □ Demolition □ Foundation only □ Moving/Relocating

2. Residential
□ Single-family □ Detached Single-family attached □ Two or more family (number of units) 144
□ Detached Single-family attached □ Multi-family

3. Accessory Building
□ Garage □ Shed □ Pole Barn □ Carport □ Deck □ Other-Specify: Yes
□ Other-Specify: __________________________

4. Non-residential
□ Amusement/recreational □ Church □ Parking garage □ Service Station □ Hospital/Institutional
□ Office □ Public Utility □ School/Library □ Mercantile Stores □ Tanks/Towers/Co-Locaiton
□ Other-Specify: __________________________

Describe in detail the proposed nonresidential use of buildings and land area (i.e. food processing plant, machine
shop, laundry, elementary school, secondary school, college, parochial school, parking garage, department store,
rental office building, office building, building at industrial plant, change of use)

Department buildings – Rex 144 units

Phone Conversation w/ Ms. Donald
3/18/2000 @ 2:50pm

Effective 9-14-2018

Page 1
5. Type of Ownership
- Private (individual, corporation, nonprofit)
- Public (Federal, State, or local government)

6. Cost
Cost of Improvement: $950,000 (per building) 9 Buildings Total
Electrical: $55,000  Plumbing: $70,000  Heating/AC: $85,000

Selected Building Characteristics – For new buildings complete parts 1 through 9; for demolition complete part 6 only:

1. Framing
- Masonry
- Wood Frame
- Structural Steel
- Reinforced Steel
- Other: specify

2. Heating Fuel
- Gas
- Oil
- Electric
- Coal
- Wood
- Heat Pump
- Other: specify

3. Sewage Disposal
- Public
- Private Septic

4. Water Supply
- Public or private company
- Private Well

5. Mechanical
- Will there be central air-conditioning? Yes □ No □
- Will there be an elevator? Yes □ No □

6. Dimensions
Number of stories: 2
Total square feet of all floor areas based on exterior dimensions: 20,010 - Deca Building includes breezeways
Total square feet of lot and total acre(s) of land: 15.3 acres

7. Number of off-street parking spaces
Enclosed: 32 306 - total
Outdoors: 306 - total

8. Number of bedrooms:

9. Number of bathrooms:
- Full
- Half

Effective 9-14-2018
Contact Information and Certifications - This section must be completed by the applicant/contractor and certified design professional (CDP) as applicable:

Applicant/Agent:
Name: Brenda S. Dolan, Manager
Address: 1500 Bridge Tender Dr., Henrico, VA Zip 23233
Phone Number: 804-517-6200 E-mail Address: dolanproperties@verizon.net
Signature of Applicant: Brenda S. Dolan Date: 3/8/2020

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her agent and we agree to conform to all applicable laws of Essex County and the Commonwealth of Virginia. I further authorize agents of Essex County or any other government agency(s), if needed, to enter and inspect the project to ensure all work in accordance with the regulations and laws of Essex County and the Commonwealth of Virginia.

Contractor/Agent:
Name: Dolan Rental Properties LLC
Address: 1500 Bridge Tender Dr., Henrico, VA Zip 23233
Phone Number: 804-517-6200 E-mail Address: dolanproperties@verizon.net
Professional License Number(s): 2005-1503-4A
Signature of Contractor: Brenda S. Dolan Date:

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his/her agent and we agree to conform to all applicable laws of Essex County and the Commonwealth of Virginia. I further authorize agents of Essex County or any other government agency(s), if needed, to enter and inspect the project to ensure all work in accordance with the regulations and laws of Essex County and the Commonwealth of Virginia. I further certify that my professional license is up to date in accordance with the Commonwealth of Virginia.

Architect/Engineer/Certified Design Professional
Name: Robert Hummel
Address: 3800 Stillman Drw., Suite 203, Henrico, VA Zip 23233
Phone Number: 804-249-4719 E-mail Address: R.Hummel@HumelHome.com
Professional License Number(s): 011517
Signature of CDP: 011517 Date: 3/7/20

I hereby certify that the proposed work is authorized by the owner of record and/or their agent that I have been authorized by the owner to prepare the plans and specifications in accordance with the requirements of Essex County and the most recent edition of Uniform Statewide Building Code.

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Approved by: ___________________________ Date: ___________________________

Title: ___________________________
Per VCC 110.20, if work is suspended or abandoned for a period of more than 12 months, the permit may be revoked.

Riverstone Development LLC

Brandy S. Dolan, Member, Manager

5/7/2020
TIMOTHY J. DOLAN
P.O. Box 3777
Glen Allen, VA 23058-3777
804-441-4322

April 10, 2020

TO ALL MEMBERS OF THE ESSEX COUNTY
LOCAL BOARD OF BUILDING CODE APPEALS
VIA EMAIL AND FIRST-CLASS MAIL

NOTICE OF APPEAL

Please accept this letter as my Notice of Appeal pursuant to Virginia Construction Code section 119.5. The basis of the appeal is explained below.

NAME AND ADDRESS OF OWNER:
Riverstone Development LLC
11500 Bridgetender Drive
Henrico, VA 23233

LOCATION OF PROPERTY:
15.3 acres located on Hobbs Hole Drive
Tappahannock, VA 22560

NAME AND ADDRESS OF PERSON APPEALING:
Timothy J. Dolan
11500 Bridgetender Drive
Henrico, VA 23233

LOCAL BUILDING OFFICIAL DECISION:
Since January 13, 2020, I have requested a decision from Alwyn W. Davis, Jr., Essex County Local Building Official, confirming that the proposed construction of approximately 153 units (maximum allowed by the zoning) in multiples of 16-unit two story buildings complies with the Exceptions contained in Virginia Construction Code 903.2.8. Most recently, Mr. Davis was advised that a decision was needed on or before April 8, 2020. No decision has been received. The Virginia State Technical Review Board has advised me that this “inaction is an action” and is appealable.
As required by Virginia Construction Code section 119.6, please schedule a meeting within 30 days to address this appeal. Given the current status related to COVID-19, I understand this meeting may need to be conducted electronically. The Virginia State Technical Review Board has advised me that appeals under section 119.5 and 119.6 must proceed despite COVID-19 concerns.

Thank you for your consideration.

Very Truly Yours,

[Signature]

Timothy J. Dolan

5-11-20

Essex County has convened other non-essential meetings with constituents and customers, but will not convene a meeting for this appeal.

[Signature]

Timothy J. Dolan
Resolution
of the Essex County Local Board of Building Code Appeals

WHEREAS, the Essex County Local Board of Building Code Appeals ("LBBCA") is duly appointed to resolve disputes arising out of enforcement of the Virginia Uniform Statewide Building Code; and

WHEREAS, an appeal has been filed and brought to the attention of the LBBCA; and

WHEREAS, a hearing has been held to consider the aforementioned appeal; and

WHEREAS, the LBBCA has fully deliberated this matter; now, therefore, be it

RESOLVED, That in the matter of

Appeal No.: 2020-01

Applicant: Timothy J. Dolan

IN RE: Appeal of absence of decision by County Building Department on applicability of Virginia Construction Code 903.2.8

The matter brought up on appeal is hereby **dismissed**, for the reasons stated on the record and as further set out below:

**There was no decision made to appeal.**

Date: 6/30/20

Signature:

Note: Any person who was a party to the appeal may appeal the LBBCA's decision to the State Building Code Technical 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, VA 23219, 804) 371-7150, [http://www.dhcd.virginia.gov/index.php/va-building-codes/building-and-fire-codes/appeals.html](http://www.dhcd.virginia.gov/index.php/va-building-codes/building-and-fire-codes/appeals.html).
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhed.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

☑️ Uniform Statewide Building Code
☑️ Virginia Construction Code
☐ Virginia Existing Building Code
☐ Virginia Maintenance Code

☐ Statewide Fire Prevention Code

☐ Industrialized Building Safety Regulations

☐ Amusement Device Regulations

Appealing Party Information (name, address, telephone number and email address):

TIMOTHY J. DOLAN
dolanproperties@verizon.net
1500 BRIDGE TENDER DRIVE
RICHMOND, VA 23233
804-441-4322

Opposing Party Information (name, address, telephone number and email address of all other parties):

ALWYN W. DAVIS JR.
adavis@essex.virginia.gov
202 S. CHURCH LANE
TAPPAHANNOCK, VA 22560
804-443-4951

Additional Information (to be submitted with this application):
- Copy of enforcement decision being appealed
- Copy of the decision of local government appeals board (if applicable)
- Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of MAY, 2020, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date on the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: ____________________________

Name of Applicant: Timothy J. Dolan

(please print or type)
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
State Building Codes Office and Office of the State Technical Review Board
Main Street Centre, 600 E. Main Street, Suite 300, Richmond, Virginia 23219
Tel: (804) 371-7150, Fax: (804) 371-7092, Email: sbco@dhcd.virginia.gov

APPLICATION FOR ADMINISTRATIVE APPEAL

Regulation Serving as Basis of Appeal (check one):

☑ Uniform Statewide Building Code
☑ Virginia Construction Code
☐ Virginia Existing Building Code
☐ Virginia Maintenance Code

☐ Statewide Fire Prevention Code
☐ Industrialized Building Safety Regulations
☐ Amusement Device Regulations

Appealing Party Information (name, address, telephone number and email address):

TIMOTHY J. DOLAN
11500 BRIDGEFENDER DR
RICHMOND, VA 23233
dolanproperties@verizon.net
804-441-4322

Opposing Party Information (name, address, telephone number and email address of all other parties):

ALWYN W. DAVIS JR., ESSEX COUNTY BUILDING OFFICIAL
202 S. CHURCH LANE
TAPPAHANNOCK, VA 22560
awdavis@essex-virginia.org
804-443-4951

Additional Information (to be submitted with this application):

☐ Copy of enforcement decision being appealed
☐ Copy of the decision of local government appeals board (if applicable)
☐ Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of JULY, 2020, a completed copy of this application, including the additional information required above, was either mailed, hand delivered, emailed or sent by facsimile to the Office of the State Technical Review Board and to all opposing parties listed.

Note: This application must be received by the Office of the State Technical Review Board within five (5) working days of the date of the above certificate of service for that date to be considered as the filing date of the appeal. If not received within five (5) working days, the date this application is actually received by the Office of the Review Board will be considered to be the filing date.

Signature of Applicant: ____________________________

Name of Applicant: Timothy J. Dolan

(please print or type)
The Appellants seek the following specific relief:

1. That the State Technical Review Board find that the actions of the Essex County Building Official in not making a decision for over six months, after repeated requests, whether or not the exception contained in Virginia Construction Code section 903.2.8 applies in our case, is in fact a decision that is appealable.

2. That the State Technical Review Board find that the decision of the Essex County Building Official referred to in number 1 above is modifiable as provided for in Virginia Construction Code section 119.7.

3. That the State Technical Review Board modify the decision of the Essex County Review Board, or otherwise find, that the exception contained in section 903.2.8 applies and should be utilized in our case.

4. That the State Technical Review Board, in the event the Essex County Building Official purports to make any additional decisions related to the exception contained in 903.2.8, (i.e., that the exception does not apply and sprinklers are required), find that in the interest of economy and efficiency this appeal will continue and be decided since the issues remain exactly the same.
(Page left blank intentionally)
Documents Submitted
By Timothy Dolan
(Page left blank intentionally)
Mr. Dolan,

Attached response to your Notice of Appeal.

--Michael

Michael A. Lombardo  
Essex County Administrator  
202 S. Church Lane  
P.O. Box 1079  
Tappahannock, VA 22560  
(Office) 804-443-4311

Mr. Lombardo:

Attached find a Notice of Appeal to the Essex County Local Board of Building Code Appeals. The Code of Virginia requires the Notice of Appeal to be sent directly to the LBCCA, but your website does not provide contact information for the members. Please distribute this Notice to each member of the Board. If you prefer that I distribute it, please provide me with the contact information for each member of the Board.

Regards, Tim Dolan
April 20, 2020

Riverstone Development LLC

Dear Mr. and Ms. Dolan,

On April 10, 2020 you contacted me requesting an appeal of your application for a building permit for 153 apartments at Hobbs Hole Drive (the "Application") before the Local Board of Building Code Appeals ("LBBCA"). I will forward your request to the LBBCA. However, due to the ongoing state of emergency declared by the Commonwealth and the County of Essex ("County"), and the County's continuity of government ordinance, the LBBCA is not required to schedule an appeal hearing within thirty days of your request. Further, I believe that your request to the LBBCA is premature and your application is incomplete. As a result, the County will oppose it on that ground.

The LBBCA is not required to hold a hearing on your request within thirty days of April 10. As you are aware, the Commonwealth and County are operating under a state of emergency due to the COVID-19 pandemic. On April 6, 2020 the County adopted an ordinance which continued all meetings, including such meetings requiring affirmative action by law. Under the County's ordinance, the LBBCA is only required to hear matters which it deems "essential" or "appropriate for the continuity of the work of the public body." Further, the deadline imposed by the Virginia Uniform Statewide Building Code has been suspended by the County's ordinance. Therefore, despite your assertion to the contrary, the LBBCA is not required to meet within thirty days of your request. I will, however, forward your request to the LBBCA and assist in organizing a meeting to hear your request as the circumstances permit.

You argue that the building official's inaction constitutes action which makes your appeal timely. This is incorrect. You submitted the Application on March 18, 2020. On March 26, Alwyn Davis formally requested additional information from you regarding the Application. Despite stating that you required an answer by April 8, you did not provide the County with the additional information we requested until April 9, 2020. You subsequently filed your appeal on April 10. One day after receipt of requested information does not constitute "inaction," especially in light of the COVID-19 emergency and the continuity of government ordinance. Moreover, the term used in the code is "refusal," not "inaction." These facts certainly do not show "refusal."

The building official will be reviewing the additional information that you provided to the County and will issue a decision on the Application in a timely manner. Please do not hesitate to contact me if you have further questions.

Sincerely,

Michael Lombardo
Essex County Administrator
903.2.8 Group R

An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area, except for Group R-2 occupancies listed in the exceptions to this section when the necessary water pressure or volume, or both, for the system is not available:

Exceptions:

1. Group R-2 occupancies that do not exceed two stories, including basements that are not considered as a story above grade, and with a maximum of 16 dwelling units per fire area. Each dwelling unit shall have at least one door opening to an exterior exit access that leads directly to the exits required to serve that dwelling unit.

2. Group R-2 occupancies where all dwelling units are not more than two stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit and a two-hour fire barrier is provided between each pair of dwelling units. Each bedroom of a dormitory or boarding house shall be considered a dwelling unit under this exception.
Sincerely,

Bob Himmel

From: Robert Himmel  
Sent: Wednesday, December 11, 2019 12:07 PM  
To: awdavis@essex-virginia.org  
Cc: dolanproperties <dolanproperties@verizon.net>; Jeff Hume <jhume@himmelhume.com>  
Subject: Dolan Properties 1352 Hobbs Hole, Tappahannock, VA

Good morning Wynn,

This is a follow up to our conversation yesterday regarding the water pressure and sprinklering of the 16 unit apartment building for Dolan Properties. Per our conversation we both agreed that Section 903.2.8 applies if we can prove the water pressure or volume or both are not available. As a follow up to this you were going to reach out to Jim Sydnor to get the water pressure/volume readings for this area. Please let me know if you have any other thoughts etc. or if you find anything out.

Thanks!

Bob

Robert Himmel, AIA

HImmelhume

Architecture

O: 804.249.4717  
C: 804.874.0924

rhimme@himmelhume.com
FW: Dolan Properties 1352 Hobbs Hole, Tappahannock, VA

dolanproperties <dolanproperties@verizon.net>
Thu 1/16/2020 9:31 PM
To: Jeffrey Howeth <jlhoweth@msn.com>

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Robert Himmel <rhimmel@himmelhume.com>
Date: 12/21/19 12:31 PM (GMT-05:00)
To: dolanproperties <dolanproperties@verizon.net>
Subject: FW: Dolan Properties 1352 Hobbs Hole, Tappahannock, VA

Brenda, I followed up with Wynn per our conversation and he said that the county does have the water pressure and volume to sprinkler the building. I know this is bad news for the budget. Is it a deal killer?

Thanks.

Bob

From: Robert Himmel
Sent: Friday, December 20, 2019 3:20 PM
To: awdavis@essex-virginia.org
Cc: dolanproperties <dolanproperties@verizon.net>; Jeff Hume <jhume@himmelhume.com>
Subject: RE: Dolan Properties 1352 Hobbs Hole, Tappahannock, VA

Good afternoon Wynn,

Attached please find a 30% Design Development set for your review. Please let me know if you have any questions, comments or there is anything that you would like us to pay particular attention too. Thanks and have a Merry Christmas!

https://outlook.live.com/mail/0/search?id=AQmkADAwA7c3AGZmAGU1OEE3Nz1kaXhlLTAuMAoARgAAA%28LE55CkqjidPryws33bziXEHA==
RE: Fire Flow Calculations

Jimmy Sydnor <tappzone@tappahannock-va.gov>
Fri 1/3/2020 4:15 PM
To: Jeffrey Howeth <jhoweth@msn.com>
That is correct!

From: Jeffrey Howeth [mailto:jhoweth@msn.com]
Sent: Friday, January 03, 2020 4:06 PM
To: tappzone@tappahannock-va.gov
Cc: dolanproperties
Subject: Re: Fire Flow Calculations

OK, Thanks. Based upon the Hampton Inn fire flow test, the static pressure was 50 psi, so the Town system cannot meet the sprinkler pressure requirements by itself. Also, two hours of fire flow at 800 gpm would require a tank capacity of approximately 100,000 gallons, which would mean that the Town’s water system will not meet the volume capacity for an automatic sprinkler system without supplementary storage as well.

Jeffrey L. Howeth, P.E., L.S., C.F.M. President, J. L. Howeth, P.C. 1019 Elm Street P. O. Box 1684 Tappahannock, Virginia 22560 804-443-6367 (Office) 804-241-4160 (Cell)

---

From: Jimmy Sydnor <tappzone@tappahannock-va.gov>
Sent: Friday, January 3, 2020 3:48 PM
To: Jeffrey Howeth <jhoweth@msn.com>
Subject: RE: Fire Flow Calculations

Jeff

This would require a booster pump and a tank rated for two hours of flow.

From: Jeffrey Howeth [mailto:jhoweth@msn.com]
Sent: Friday, January 03, 2020 3:17 PM
To: dolanproperties; Jimmy Sydnor; Frank Sanders
Subject: Fire Flow Calculations

Brenda, the attached file based upon the Insurance Services Organization (ISO) fire flow calculator indicates that the sprinkler allowance for a single building would be approximately 800 gpm. Also, sprinkler systems usually operate at approximately 70 to 80 psi due to their smaller pipe diameters.

By copy of this to the Tappahannock Town Manager, please verify that the Town’s water supply would provide the following needed fire flows for your apartment project.

Thanks, Jeff

Jeffrey L. Howeth, P.E., L.S., C.F.M. President, J. L. Howeth, P.C. 1019 Elm Street P. O. Box 1684 Tappahannock, Virginia 22560 804-443-6367 (Office) 804-241-4160 (Cell)
January 9, 2020

Mr. Alwyn Davis, Building Official
Essex County
P. O. Box 1079
Tappahannock, Virginia 22560

Dear Mr. Davis:

On behalf of Mrs. Brenda Dolan, we are requesting that you verify the necessity of an automated sprinkler system for the Riverstone Apartments to be located on Hobbs Hole Drive behind Walmart in the Town of Tappahannock, Virginia. Based upon Section 903.2.8 of the USBC, Group R-2 occupancies utilizing Type V construction may be exempt if the “necessary water pressure or volume, or both, for the system is not available.” As evidenced by the attached chain of emails between Mr. Jimmy Sydnor, Town Manager of the Town of Tappahannock and me, the Town of Tappahannock can neither supply the necessary pressure or volume from the existing water distribution system. Therefore, since the above referenced section contains an exemption criteria, we are requesting written verification that if Mrs. Dolan constructs two story, above grade apartment buildings with a maximum of 16 dwelling units per fire area and a single door opening to an exterior exit access that leads directly to the exits required to serve the dwelling unit, she shall not be required to provide an automated sprinkler system for any of the proposed apartment buildings.

We thank you in advance for your prompt attention to this matter and remain available to provide further information as may be requested concerning this matter.

Very truly yours,

[Signature]

Jeffrey L. Howeth, P.E., L.S., C.F.M.
President, J. L. Howeth, P.C.

cc: Mrs. Brenda Dolan, Contract Purchaser
April Rounds

From: awdavis@essex-virginia.org
Sent: Monday, January 13, 2020 11:37 AM
To: tapzone@tappahannock-va.gov
Subject: FW: Dolan Properties 1352 Hobbs Hole, Tappahannock, VA

From: Alwyn Davis
Sent: Monday, January 13, 2020 11:31 AM
To: 'Robert Himmel' <rhimmel@himmelhume.com>
Cc: 'jhoweth@msn.com' <jhoweth@msn.com>; Wayne Verlander <wverlander@essex-virginia.org>
Subject: RE: Dolan Properties 1352 Hobbs Hole, Tappahannock, VA

Good Morning Bob,
Please allow this email to serve as a follow up to our conversation last week regarding the Dolan properties apartment building in Tappahannock. Section 903.2.8 of the Virginia Construction Code clearly states that a sprinkler system is required in all R-2 occupancies except when the necessary water pressure or volume, or both, for the system is not available. I received information from J. L. Howeth P.C. from an (ISO) fire flow calculator that indicated that the flow required would exceed the volume/pressure that the Town of Tappahannock’s water system would provide. I understand from Mr. Sydor that the water pressure available is 52 PSI. The exceptions in the code would alleviate the developer from this requirement but I do feel that the apartments would be better served if they were served by a sprinkler system. I am recommending that a study be performed by an engineer who practices the design of these systems on a regular basis to determine if a sprinkler system would work at the proposed location. I believe that the volume and or pressure may be available or made available if properly designed. Please understand that I’m not discounting the information that Mr. Howeth has submitted, but I will need more information prior to making a decision. If the pressure/volume is not available, I will entertain using exception 1 in the aforementioned section of the VCC. Please feel free to contact me if you have questions or if I can be of further assistance.

Yours Truly,

Alwyn W. "Wyn" Davis Jr.
Certified Building Official, Essex County, Virginia

From: Robert Himmel <rhimmel@himmelhume.com>
Sent: Friday, December 20, 2019 3:20 PM
To: Alwyn Davis <awdavis@essex-virginia.org>
Cc: dolanproperties <dolanproperties@verizon.net>; Jeff Hume <jhumehimmelhume.com>
Subject: RE: Dolan Properties 1352 Hobbs Hole, Tappahannock, VA

Good afternoon Wynn,

Attached please find a 30% Design Development set for your review. Please let me know if you have any questions, comments or there is anything that you would like us to pay particular attention too. Thanks and have a Merry Christmas!

Sincerely,

Rob Himmel

EXHIBIT 10
FW: Re: 50 percent plans

dolanproperties <dolanproperties@verizon.net>

Wed 1/29/2020 4:05 PM
To: Jeffrey Howeth <jilhoweth@msn.com>

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Sam Beach <sbeachrsc@comcast.net>
Date: 1/29/20 11:34 AM (GMT-05:00)
To: dolanproperties <dolanproperties@verizon.net>
Subject: Re: 50 percent plans

Brenda,

Please see the rough system demand and duration calculations below.
These are based on NFPA 13R. Design Criteria - 4 Head flow of the most demanding sprinkler heads.

Maximum sprinkler coverage area = 400 sqft
Providing a density of .05 gpm = 20 gpm per head x 4 heads = 80 gpm

Actual interior system demand = 80 gpm + 30% overage = 104. gpm total system demand.

( NFPA 13R) 104 gpm x 30 min. duration = 3,120.00 gpm
104 gpm x 120 min. duration = 12,480.00 gpm

I hope this helps.

Thanks,

Samuel G. Beach
President
Richmond Sprinkler Corp.
ph. 804-275-6800
Fax 804-275-0077

On January 21, 2020 at 10:47 AM dolanproperties <dolanproperties@verizon.net> wrote:

Attached are the plans we discussed. Thank you so much for your assistance. Brenda Dolan
J. L. Howeth P.C.
Consulting Engineering and Land Surveying
ALL LOCATIONS BY APPOINTMENT ONLY

1019 Elm Street
Tappahannock, Virginia 22560
804-443-6367

9408 Kings Highway
King George, Virginia 22485
540-775-5885

2833 Cople Highway
Montross, Virginia 22520
804-493-9066 / 804-493-1333

February 6, 2020

Mrs. Brenda Dolan
Riverstone Apartments
Tappahannock, Virginia 22560
VIA EMAIL.

Dear Brenda:

Based upon the attached fire hydrant flow information for the existing fire hydrant located across from the Clubhouse on Hobbs Hole Drive which was independently tested on February 3, 2020 by J. L. Howeth, P.C. and the Town of Tappahannock (test results attached and video of test available upon request from Mr. Jimmy Sydnor, Town Manager), we have computed the required hydraulic analysis utilizing the Virginia Department of Health’s Waterworks Regulations for the design criteria of the potable water mains for your Riverstone Apartment project. Based upon the existing hydrant flow of 875 gpm at a residual pressure of 20 psi and correcting for pressure by moving to the point of physical connection and flow by subtracting 125 gpm for the estimated flow of the undeveloped Hobbs Hole Subdivision lots, we can compute the calculated water main pressure of 22.4 psi at the intersection of White Oak Drive and Hobbs Hole Drive connection point. Extending the water mains northward along Hobbs Hole Drive to the proposed project entrance, we calculate the water main pressure to be 21.4 psi using an oversized 10” pipe to reduce friction. Further extending the water mains to the rear of the project, the calculated water main pressure would be 21 psi at the last fire hydrant in the project, also utilizing the oversized 10” pipe. Furthermore, based upon my conversations with the State Building Official’s Office and the State Fire Marshal’s Office, NFPA 13R requires an RPZ backflow preventer on the sprinkler line which creates a minimum pressure drop of between 5 and 10 psi at a previously calculated sprinkler flow rate of approximately 100 gpm. Since this value pushed the residual pressure to the building to less than 20 psi minimum pressure required by Virginia Department of Health Waterworks Regulations, it is evident that the existing Town of Tappahannock potable water system cannot supply either the pressure or volume as defined in VCC Section 903.2.8.

Furthermore, since Mr. Jimmy Sydnor, Town Manager for the Town of Tappahannock, who clearly is the “public health authority having jurisdiction” and whose “requirements ... shall be determined and followed” (NFPA 13R Section 9.4.1), has already stated in writing that he cannot provide either the pressure or volume as stated in the above referenced VCC code section,
Mrs. Brenda Dolan  
Riverstone Apartments  
February 6, 2020  
Page 2

I am again requesting confirmation from the Essex County Building Official that this project qualifies for the exemption stated in VCC Section 903.2.8. Clearly, no authority is given to the Building Official to digress from the requirements of the Virginia Department of Health Waterworks Regulations nor violate the Waterworks Certificate to Operate issued to the Town of Tappahannock by the Virginia Department of Health.

Please request from the Essex County Building Official a written response to our request for exemption specified in VCC Section 903.2.8. As always, we are available to provide information as may be required concerning this matter.

Sincerely,

[Signature]

Jeffrey L. Howeth, President, J. L. Howeth, P.C.  
Virginia Licensed Professional Engineer  
Virginia Licensed Land Surveyor  
Nationally Certified Floodplain Manager  
President, J. L. Howeth, P.C.
FIRL HYDRANT FLOW TEST
HOBBS HOLE DRIVE AT CLUBHOUSE
TOWN OF TAPPAHANNOCK, FSSFX COUNTY, VIRGINIA
FEBRUARY 3, 2020

<table>
<thead>
<tr>
<th>HYDRANT B FLOW -- GPM</th>
<th>HYDRANT A RESIDUAL PRESSURE -- PSI</th>
<th>HYDRANT B RESIDUAL PRESSURE -- PSI</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
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</tr>
<tr>
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</tr>
</tbody>
</table>

Flow CALCULATED at 20 PSI
Date of hydrant test: February 3, 2020
Flow Hydrant Location: Hydrant B at Hobbs Hole Drive at Clubhouse
Static pressure reading at Hydrant A at Hobbs Hole Drive and Megan Street Intersection: 48 PSI
Residual pressure readings taken at Hydrant A at Hobbs Hole Drive and Megan Street Intersection
Flow Reading (using pitot gauge) taken at Hydrant B
Water Main Diameter (in inches): 8
Fire Hydrant Outlet Size-2.5" Hydrant Connection
Outlet Type - Smooth, Rounded
Coefficient of Discharge - 0.9
Hydrant A Residual pressures corrected to Hydrant B for friction only -
(No elevation change based upon relatively flat topography)
FIRE HYDRANT FLOW TEST
HOBB'S HOLE DRIVE AT CLUBHOUSE
TOWN OF TAPPAHANNOCK, ESSEX COUNTY, VIRGINIA
FEBRUARY 3, 2020
Hydraulic Analysis - DPH Format (C=128)

Riverstone Apartments
Town of Warwick

Subtracting 125 GPM for undeveloped lots and
Based upon existing normal
Infiltrative and flood from hydrant flood test
Conducted February 3, 2020, high hydrant at
Hesse Avenue Closes House floods 200 GPM at
Residual pressure of 20 PSI

A) Existing hydrant to main drive and "no runs" no drive (190 GPM)

\[
28 \text{ PSI} - \left( \frac{110544 \text{ ft}^3 \cdot \text{in}}{127 \text{ ft}^3 \cdot \text{in}} \right) \left( \frac{19.4 \text{ PSI}}{100 \text{ ft}^3 \cdot \text{in}} \right) = 22.4 \text{ PSI}
\]

B) Intake main line + "no runs" no man to project entrance (562 GPM)

\[
22.4 \text{ PSI} - \left( \frac{910 \text{ ft}^3 \cdot \text{in}}{0.24 \text{ ft}^3 \cdot \text{in}} \right) \left( \frac{19.4 \text{ PSI}}{100 \text{ ft}^3 \cdot \text{in}} \right) = 21.4 \text{ PSI}
\]

C) Project entrance to last hydrant (438 GPM)

\[
21.4 \text{ PSI} - \left( \frac{500 \text{ ft}^3 \cdot \text{in}}{0.16 \text{ ft}^3 \cdot \text{in}} \right) \left( \frac{19.4 \text{ PSI}}{100 \text{ ft}^3 \cdot \text{in}} \right) = 21.1 \text{ PSI}
\]

D) Hydrant in building through RPS for
Conversational with static fire main at
Would be 5 PSI min loss which reduces main
Pressure beyond 20 PSI which would be rejected...
DOUBLE FLOOD TO POINT A) IS

\[
\frac{750 \text{ GPM}}{\text{MAXIMUM}} \times \left( \frac{52 \text{ GPM}}{\text{BUILDING}} \right) \times \left( \frac{9 \text{ APARTMENT BUILDINGS}}{\text{APARTMENT BUILDINGS}} \right) = 428 \text{ GPM}
\]

AND

250 GPM + 98 GPM (ADMIT ALLOWANCE) = 372 GPM (APPROXIMATELY)

Then, formula used for 105 GPM CALC FOR 4 HEADS

FLOOD TO POINT B) IS

\[
\frac{\left( \frac{52 \text{ GPM}}{\text{BUILDING}} \right) \times \left( 4 \text{ APARTMENT BUILDINGS} \right)}{\left( \frac{52 \text{ GPM}}{\text{BUILDING}} \right) \times \left( 6 \text{ APARTMENT BUILDINGS} \right)} = 312 \text{ GPM}
\]

NO SPRINKLER ALLOWANCE + AS VOLUME ABOVE COULD + 250 GPM ADMIT = 562 GPM

AND FLOOD TO POINT C) IS

\[
\frac{\left( \frac{52 \text{ GPM}}{\text{BUILDING}} \right) \times \left( 4 \text{ APARTMENT BUILDINGS} \right)}{\left( \frac{52 \text{ GPM}}{\text{BUILDING}} \right) \times \left( 4 \text{ APARTMENT BUILDINGS} \right)} = 208 \text{ GPM}
\]

+ NO SPRINKLER ALLOWANCE + AS VOLUME ABOVE COULD NOT BE MET

\[
\frac{\left( \frac{52 \text{ GPM}}{\text{BUILDING}} \right) \times \left( 4 \text{ APARTMENT BUILDINGS} \right)}{\left( \frac{52 \text{ GPM}}{\text{BUILDING}} \right) \times \left( 4 \text{ APARTMENT BUILDINGS} \right)} = 458 \text{ GPM}
\]

AS VOLUME ABOVE COULD NOT BE MET
February 7, 2020

Mrs. Brenda Dolan
Riverstone Apartments
Tappahannock, Virginia 22560
VIA EMAIL.

Dear Mrs. Dolan:

At your request, I have performed a review of Section 903.2.8 of the Virginia Construction Code with emphasis on whether or not your project could meet the exception criteria contained in this section. It should be noted that this language is specific to the Virginia Construction Code and not the USABC, presumably to assist with the construction of affordable housing by allowing the equivalent life safety options of either an automated residential sprinkler system or the inclusion of additional firewalls in a limited occupancy low rise structure with proper egress paths. While it is possible through engineering and construction that an automated sprinkler system could be constructed using tanks, pumps and even wells to provide an independent water supply separate from the existing potable water system owned by the Town of Tappahannock, it appears that the intent of the regulation is not to have the owner expend substantial funds on an independently constructed sprinkler water system solely dedicated to fire protection if the project could be constructed meeting the exception criteria. Furthermore, Mr. Jimmy Sydnor, Town Manager of the Town of Tappahannock has publicly commented in writing that the Town cannot guarantee the water pressure or volume based upon hydraulic calculations previously submitted by our firm and that any requirement of an automatic sprinkler system shall be designed as an independent water sprinkler system with pumps and tanks as necessary, thereby obviously making “necessary water pressure and flow” unavailable.

Therefore, based upon the above facts and understanding, we can review the VCC code section line by line to verify the exception. In Paragraph 1, the code states that an automated sprinkler system installed in accordance with Section 903.3 is required throughout all buildings with a Group R fire area. The code section further states a provision for R-2 occupancies listed in the exceptions to this section when the necessary water pressure or volume, or both for the system is not available. Hydraulic calculations which have been prepared by a Professional Engineer licensed in the Commonwealth of Virginia have indicated that the pressure is not available to properly install an automated sprinkler system and these calculations have been verified by the Town of Tappahannock. It should also be noted that the Town of Tappahannock is the public health authority having jurisdiction and whose requirements shall be determined and followed in
accordance with Section 9.4.1 of NFPA 13R, which is the design guide referenced in writing by the Building Official. Therefore, based upon the two exceptions listed in this VCC code section, in order to comply with the exceptions, the Group R-2 occupancy buildings shall be designed and constructed utilizing the following criteria:

1. The building shall not exceed two stories, including basements that are not considered as a story above grade. Dwelling units shall not be more than two stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit.

2. The building shall have a maximum of 16 dwelling units per fire area.

3. Each dwelling unit shall have at least one door opening to an exterior exit access that leads directly to the exits required to serve that dwelling unit.

4. A two hour fire barrier shall be provided between each pair of dwelling units.

Since your apartments are not classified as being a dormitory or boarding house, the final sentence of the code does not apply to this project.

In conclusion, based upon the calculations of the hydraulics engineer reviewing the potable water system and acknowledgement that the Town of Tappahannock has indicated in writing that the water pressure and volume are insufficient to construct an automatic sprinkler system connected directly to the Town of Tappahannock's potable water system, with the Town of Tappahannock being the "public health authority having jurisdiction" as required by the latest written guidance provided by the Essex County Building Official, I conclude that your Riverstone Apartment project complies with the exceptions of Section 903.2.8 Group R, providing that you design and construct the buildings with the above four criteria contained in this section of the code.

I remain available to provide further information as may be required concerning this matter.

Sincerely,

[Signature]

Jeffrey L. Howeth
Virginia Licensed Professional Engineer
Virginia Licensed Land Surveyor
Nationally Certified Floodplain Manager
President, J. L. Howeth, P.C.
February 9, 2020

Mr. Michael Lombardo, County Administrator
Essex County
202 South Church Lane
Tappahannock, Virginia 22560

Dear Mr. Lombardo:

Attached please find my Registered Design Professional’s opinion of whether Dolan Properties’ Riverstone Apartment buildings could meet the exception criteria contained in Section 903.2.8 of the Virginia Construction Code. Based upon our research and the facts contained in the attached documents, it appears that if the buildings are constructed in accordance with the design criteria set forth in the Code and repeated in the code opinion letter, they will meet the exception criteria and can be constructed as such. Acceptance of this conclusion therefore could be handled as an Issuance of Modification in accordance with Section 106.3 of the Virginia Construction Code and the attached supporting documentation could be accepted as the Substantiation of Modification as defined in Section 106.3.1. This would expedite the completion of design and construction documents which have been substantially delayed and improve the communications between the County, Town and Contract Purchaser.

We trust that the attached documentation is sufficient to validate that the exception for the Riverstone Apartment buildings. As always, we remain available to provide information as may be requested concerning this matter.

Very truly yours,

[Signature]

Jeffrey L. Howeth
Virginia Licensed Professional Engineer
Virginia Licensed Land Surveyor
Nationally Certified Floodplain Manager
President, J. L. Howeth, P.C.
Jeff Howeth  
PO Box 1684  
Tappahannock, VA 22560

REF: Riverstone Apartments

Dear Jeff Howeth:

According to Section 14.2 of the Tappahannock Town Code ALL building permits shall be obtained from the Essex County Building Official.

Although we are in favor of growth, we will not be caught up in any conflict between the parties and this letter is to advise ALL parties involved that the Town and its employees will remain neutral in the project known as Riverstone Apartments.

At this point of the project with the information that the Town of Tappahannock has been provided and for the safety of the citizens that would have a residence in the proposed units we would not be able to guarantee water for the sprinkler system. This is based on the overall build out of all the units on the entire site plan plus the remaining build out of Hobbs Hole subdivision, and keeping with a required twenty (20) PSI in our system under any conditions.

Once all the matters have been resolved involving the sprinkler system the Town will forward all water requirements (fire and domestic or any other) to our engineer for final review and approval.

Thank you.

Sincerely,

James W. Sydnor  
Town Manager
FW: Hobbs Hole Dr. Flow Test Report

dolanproperties <dolanproperties@verizon.net>

Tue 3/3/2020 3:34 PM
To: Jeffrey Howeth <jhoweth@msn.com>

1 attachment (475 KB)
Hobbs Hole Dr. Flow Test Report.pdf;

--- Original message --------
From: Michael Lombardo <mlombardo@essex-virginia.org>
Date: 3/3/20 3:18 PM (GMT-05:00)
To: dolanproperties <dolanproperties@verizon.net>
Cc: Matt Farmer <mfarmer@essex-virginia.org>, Robert Akers <rakers@essex-virginia.org>, John Magruder <jmagruder@essex-virginia.org>, jsydnor@tappahannock-va.gov, Alwyn Davis <awdavis@essex-virginia.org>
Subject: FW: Hobbs Hole Dr. Flow Test Report

Attached is a copy of the results of the hydrant flow test and determination from the independent engineer that sufficient water pressure and flow exists for a sprinkler system.

- Michael

Michael A. Lombardo
Essex County Administrator
202 S. Church Lane
P.O. Box 1079
Tappahannock, VA 22560
(Office) 804-443 4311
From: Joe Beck [mailto:beck3jc@msn.com]
Sent: Monday, March 2, 2020 7:21 AM
To: Cody Brock <ubrock@etecfireprotection.com>; Matt Farmer <mfarmer@essex.virginia.org>
Cc: Pat Sigmon <psigmon@etecfireprotection.com>; Sam Carter <scarter@etecfireprotection.com>
Subject: Re: Hobbs Hole Dr. Flow Test Report

There is enough water pressure and flow to protect the proposed two-story apartment building with an NFPA 13R system. Unless Essex requires reduced pressure backflow preventers or a very large amount of safety factor design should not be an issue. There are so many variations of sprinkler type and layout that the exact figures cannot be provided until a full design is completed. Typically a four sprinkler residential design will only require 50-80 gpm and 25-30 psi with an additional 100 gpm needed for outside hose allowance.

Joe Beck, P.E. - NC, SC, TN, VA
**Private Fire Service Mains**

**Hydrant Flow Test Report**

**Name of Property:** Hobbs Hole Dr.

**Address:** Hobbs Hole Dr. Tappahannock, VA

**Tested by:** Doug Self / Cody Brock

**Date:** 02/27/2020

**Contract No.:** N/A

**Time:** 12:30 pm

**Weather conditions:** 50 Degrees, Windy

**Location of test:** Hobbs Hole Dr. (Across from golf course club house)

**Residual hydrant location:** Hobbs Hole Dr. & Megan St.

**Flow hydrant(s) location:** Hobbs Hole Dr. (Across from golf course club house)

<table>
<thead>
<tr>
<th>Static pressure (residual hydrant)</th>
<th>47</th>
<th>psi (bar)</th>
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<tr>
<td>Residual pressure (residual hydrant)</td>
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<td>psi (bar)</td>
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<tr>
<td>Nozzle size (flow hydrant)</td>
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<td>Nozzle coefficient (flow hydrant)</td>
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<td>Pitot pressure(s)</td>
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<tr>
<td>Projected results:</td>
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<td>gpm (lpm)</td>
</tr>
</tbody>
</table>

Outlet smooth and rounded coef. 0.90
Outlet square and sharp coef. 0.60
Outlet square and projecting into barrel coef. 0.70

**Remarks:**

---

3205 W. Moore Street – Richmond, VA 23230 (P) 804-340-1900 (F) 804-726-1801
VA Contractors License: 2705 082715A
Form 12
Re: Hobbs Hole Dr. Flow Test Report

Jeffrey Howeth <jlhoweth@msn.com>
Tue 3/3/2020 6:58 PM
To: dolanproperties <dolanproperties@verizon.net>; barkema@daglaw.com <barkema@daglaw.com>

Brenda, the following questions need to be asked of the Engineer:

1. Was the pressure/flow corrected to the point of connection?
2. What distance did you use for the piping to the northeast building, which will be the first building to be constructed?
3. Our VDH calculations clearly stated that a RPZ backflow preventer would be required for these sprinklers in accordance with the Town's Cross Connection Program monitored by VDH. Why was this omitted from the Engineer's analysis?
4. The Town requires a large safety factor. Why was this omitted from the Engineer's analysis?
5. It was clearly stated that the northeast building only had 32 gpm of available flow at 21 psi based upon the VDH calculations. How does the Engineer determine that there is enough pressure and flow for a sprinkler system? Where are the Engineer's calculations regarding the potable water system hydraulics? These calculations should be provided and sealed for review by all parties involved.
6. What values did the Engineer use for the domestic demand? Were they computed from actual fixture counts or estimated? Also, did the Engineer use the AWWA high or low flow rate curve for demand?
7. What minimum flow rate did the Engineer use for the outside hydrant flow allowance. The NFPA 13R standard requires 100 gpm hose allowance while the VDH Waterworks Regulations requires 250 gpm for a hydrant to be installed at all.
8. Why wasn't the Professional Engineer present at the hydrant flow test?
9. Why was a sprinkler company allowed to perform the hydrant flow test instead of a full service engineering firm with a Professional Engineer present during the test? Also, is the Professional Engineer employed by the sprinkler company? If not, did the Professional Engineer disclose his relationship in writing regarding the sprinkler company prior to Essex County contracting him to do the work?
10. Was this analysis for one building or all nine buildings supported by the zoning of the property?
11. Why was the Hydrant Flow Test Report performed for private fire service mains instead of public water mains?

Does the Joe Beck email confirm that the Riverstone Apartments qualifies for the fire wall exception since my engineering calculations proved that the flow and pressure to the northeast building is less than the minimum stated by the County's Engineer?

Jeffrey L. Howeth, P.E., I.S., C.F.M. President, J. L. Howeth, P.C. 1019 Elm Street P. O. Box 1684 Tappahannock, Virginia 22560 804-443-6367 (Office) 804-241-4160 (Cell)

From: dolanproperties <dolanproperties@verizon.net>
Sent: Tuesday, March 3, 2020 3:33 PM
To: Jeffrey Howeth <jlhoweth@msn.com>
Subject: FW: Hobbs Hole Dr. Flow Test Report
Wayne Verlander

From: Matt Farmer
Sent: Friday, May 8, 2020 9:02 AM
To: Wayne Verlander
Subject: RE: Meeting with Engineer Firm
Attachments: Questions for Flow Test.docx

Attached. It was questions sent in by Mr. Dolan.

From: Wayne Verlander
Sent: Thursday, May 7, 2020 6:39 PM
To: Matt Farmer <mfarmer@essex-virginia.org>
Subject: Fwd: Meeting with Engineer Firm

Hello Matt - could you please send your original message that the engineer is responding to?
Thanks,
Wayne

Get Outlook for iOS

From: Alwyn Davis <awdavis@essex-virginia.org>
Sent: Thursday, May 7, 2020 4:54 PM
To: Wayne Verlander
Subject: Fwd: Meeting with Engineer Firm

FYI,

Sent from my iPhone

Begin forwarded message:

From: Matt Farmer <mfarmer@essex-virginia.org>
Date: May 7, 2020 at 4:23:19 PM EDT
To: Heather Hostinsky <hhostinsky@essex-virginia.org>
Cc: Alwyn Davis <awdavis@essex-virginia.org>, Wayne Verlander <wverlander@essex-virginia.org>
Subject: RE: Meeting with Engineer Firm

I would suggest trying to call him. Below is the last email he sent, which has his name and contact information.

Mr. Farmer,

My current schedule will not allow me to continue any further with this project. Here are some basic answers to the questions you sent. I hope this helps with your project going forward.

1. The fire sprinkler design is not to a level where hydraulic calculations were run.
2. See answer to #1.
3. See answer to #1. Cross connection requirements are found at the county level. This building is considered a "lo hazard" system in terms of the fire sprinkler system. Many jurisdictions including the City of Richmond and Chesterfield county would only require a standard double gate, double check type backflow preventer. State agencies defer to each county's cross connection dept.
4. There is no code mandated safety factor in sprinkler calculations. 5 psi is a typical figure.
5. See answer to #1.
6. Domestic demand is not included in fire sprinkler calculations unless the connection to the water supply is made on the building side of the water meter. This is rare except in cases of limited sprinkler systems and/or 13D type systems, neither of which you have.
7. See answer to #1.
8. Hydrant flow test do not require the presence of a PE.
9. Fire sprinkler companies are more than qualified to perform hydrant flow tests. As stated above, PE firms are not required to conduct a hydrant flow test. Such a company would probably be my last choice to conduct such a test.
10. No comment.
11. Hydrant flow tests should be conducted at a point closest to the connection point for a new fire sprinkler system. Whether those underground mains are public or private are not a factor.
12. The reference is incorrect. Maybe 13R, 9.3.1. A county water supply is typically categorized as reliable.

Good luck with your project.

Joe Beck, P.E. - NC, SC, TN, VA
804 590 0962 Office
804 691 3640 Cell

From: Heather Hostinsky
Sent: Thursday, May 7, 2020 3:50 PM
To: Matt Farmer <mfarmer@essex-virginia.org>
Cc: Alwyn Davis <awdavis@essex-virginia.org>; Wayne Verlander <wverlander@essex-virginia.org>
Subject: Meeting with Engineer Firm

Matt,

Wyn and Wayne would like to know if there is any way that you could get a meeting set up for Thursday, May 14, 2020 at 10am with the engineer firm that did the flow testing? They would need the actual engineers on the call not the techs that actually did the field work due to having technical questions.

Thank you.

Heather Hostinsky
Building and Zoning Office Manager
Essex County
202 South Church Lane
P.O. Box 549
Tappahannock, VA 22560
804-443-3256
Waterworks Regulations - Requirements for Submittal of Plans

Morrissette, Randall <randall.morrissette@vdh.virginia.gov>

Tue 3/10/2020 6:19 PM

To: Jeffrey Howeth <jhoweth@msn.com>

Jeff,

12VAC5-590-200 of the Waterworks Regulations covers the requirements for obtaining a waterworks construction permit.

F. A summary of complete design criteria shall be submitted for the proposed project, containing but not limited to the following where applicable:

1. Yield of source of supply,
2. Reservoir surface area
3. Area of watershed
4. Estimated water consumption
5. Number of proposed services
6. Fire-fighting requirements
7. Basin capabilities
8. Retention times
9. Unit loadings
10. Filter area and proposed filtration rate
11. Backwash rate
12. Feeder capacities and ranges

Randy Morrissette
(804) 864-8176
March 26, 2020

Dear Ms. Dolan --

I have reviewed your application for a building permit for 153 apartment units and I need some clarification. Our permit fee schedule is based on square footage of construction being built and the application documents are not clear. The application indicates 153 housing units with 20,000 square feet per building. The architectural drawings submitted highlight 1 project apartment building. The engineered site plan indicates 5 apartment buildings. We need a clear understanding of the scope of work that you are planning to construct at this time. We need engineered drawings that cover the scope of work for the building permit application. If you have any questions, please let us know. Once we get clarification on the scope of the project, Heather will let you know the cost of the permit and we will begin reviewing the plans.

Thank you,

Alwyn Davis
March 29, 2020

Mr. Alwyn Davis, Building Official
Essex County
202 South Church Lane
P. O. Box 549
Tappahannock, Virginia 22560

Dear Mr. Davis:

On behalf of Riverstone Development, L.L.C. we wish to clarify the scope of the Riverstone Project as you requested in your letter of March 26, 2020 to Mrs. Brenda Dolan. Based upon your observations of the submitted architectural plans, this one building will be constructed a maximum of nine times using the same floorplan over the duration of the project. This should have been obvious as the Final Site Plan for the current phase of the project depicted five buildings as you previously noted and the General Development Plan attached to and made a part of the Final Site Plan depicted the remaining four buildings and a number of villas which brought the total parcel density to 153 multi-family residential units. The requirement to clearly demonstrate the ultimate build-out of the project is contained in the Code of Virginia as well as almost all local ordinances, including the Town of Tappahannock’s Ordinance, which is the ordinance governing the development of this project. Further examples of this overall development criteria are contained in the following regulations:

Virginia Waterworks Regulations – Section 12 VAC 5-590-200
Virginia Sewage Collection and Treatment Regulations – Section 12 VAC 5-581-210
Virginia Stormwater Management Regulations – Section 9 VAC 25-870-10
Virginia Department of Transportation – Section 24 VAC 30-73

It should further be noted that the Town of Tappahannock’s Zoning Ordinance Section 22-42 specifically addresses development in phases. Other sections of the Town Ordinance also address the requirements of final engineered plans versus design calculations specifically discussing capacities of public utilities such that once the first phase of a project is approved with a General Development Plan attached, all subsequent phases of the development are accounted for with respect to water and sanitary sewer capacity, stormwater management and VDOT commercial entrances, just as required in the above referenced state codes.
To even consider severing this project into its individual pieces to attempt to bolster your sprinkler position defies the intent of all of the above referenced regulations and the Town of Tappahannock's Zoning Ordinance. This observation alone, coupled with the exception contained in the Virginia Construction Code eliminating the sprinkler system entirely, clearly indicates that domestic flow is addressed first, hydrant flow is addressed second and any remaining flow can be assigned to a future sprinkler system (hence the NFPA 13R hose allowance, which can't possibly exist if there are no fire hydrants sufficient to provide the flow and which cannot even be installed based upon the Virginia Department of Health's Waterworks Regulations). Since I am the only Professional Engineer who has been willing to sign and seal my engineering conclusions to date regarding these matters, any conclusions recommended by the Engineer that the County chose to hire and pay for are currently unusable without validation and additional calculations and certainly appear to be a waste of taxpayer money.

I will be providing a set of Final Site Plans with the attached General Development Plan referenced above for your pickup and review. Please review the Erosion and Sediment Control portions of the plan set as the Virginia Department of Environmental Quality will require a written statement from you as to whether the plans are technically adequate and approved as you are also the Erosion and Sediment Control agent for the Town of Tappahannock.

I look forward to your written response for approval by April 8, 2020 of the submitted architectural plan with firewalls and no sprinkler system as allowed by the exception contained in Section 903.2.8 of the Virginia Construction Code based upon the criteria of the public health authority having jurisdiction and plan and calculation data presented to date.

Sincerely,

Jeffrey L. Howeth, P.E., L.S., C.F.M.
President, J. L. Howeth, P.C.
April 22, 2020

Timothy J. Dolan  
11500 Bridgetender Drive  
Henrico, VA. 23233

RE: Riverstone Apartment Plans

Dear: Mr. Dolan,

This letter is to request additional information in order to complete the review and process your request for a building permit. The additional information needed includes the following:

- A permit application that clearly identifies the scope of work. The application must identify the number of buildings you plan to construct at this time.
- A site plan that identifies the location of all proposed construction and associated utilities.
- An engineered set of plans for all buildings that are identified on the application. The current application is for 153 units and the architectural plans highlight one apartment building.
- Your application, site plan and architectural (engineered) drawings must be consistent.
- An approved zoning permit.
- An approved stormwater pollution prevention plan (SWPPP).
- An approved land use entrance permit from the Virginia Department of Transportation.
- A geotechnical evaluation on the soil for each building's footing.

Please contact this office if you have any questions.

Sincerely,

Matt Farmer

Matt Farmer  
Planning Director/  
Zoning Administrator
April 22, 2020

Mr. Matt Farmer, Planning Director, Zoning Administrator
Essex County
202 South Church Lane
P. O. Box 549
Tappahannock, Virginia 22560

Dear Mr. Farmer:

On behalf of Riverstone Development, LLC, we wish to respond to your request for additional information contained in your letter to Timothy J. Dolan this date:

1. The building permit application clearly defines the scope of work applied for. However, it is my understanding that the Dolans intend to build all of the units under the same building permit. Specifically, this includes the nine (9) 16-unit apartment buildings. The nine (9) villa units are not being applied for at this time as no building plans were submitted for review.

2. Multiple copies of the Final Site Plan have been submitted to your office and the Building Official on several occasions. The most recent submission was acknowledged by the County Administrator to have been received on April 9, 2020. Although this submission was to obtain Erosion and Sediment Control approval as noted in its transmittal letter and previous correspondence, you are most certainly welcome to use it for building layout review. Please note that utilities are shown on the plan as well, but they are already under review by the Town of Tappahannock and the Virginia Department of Health.

3. The architectural plans submitted for the 16-unit apartment building were delivered to your office on March 18, 2020. Since the Final Site Plan indicated nine (9) identical buildings, we assumed that your office could determine that the one set of architectural plans would be used for each of the nine buildings as it is not customary for nine identical sets of plans to be submitted for one project. This response was previously stated to the Building Official in my March 29, 2020 response letter to him that requested the same information. I have attached a copy of that letter for your convenience and reference.
4. Please explain how the application documents are not consistent, usual and customary for this type of submission.

5. We cannot obtain an approved zoning permit from the Town of Tappahannock as your Building Official and County Administrator continue to refuse to provide a decision on the firewall exception question posed on January 13, 2020, which continues to delay the approval of the building plans required by the Town of Tappahannock.

6. The SWPPP has been prepared for this project. However, we cannot obtain a stormwater permit from DEQ until such time as the County has approved the Erosion and Sediment Control Plan for this project.

7. Plans have been reviewed and commented on by the Virginia Department of Transportation. However, VDOT may not release their final approval until the Virginia Department of Environmental Quality has issued their approval since that approval is based upon a documented flooding condition of the public highway. And as described above, Riverstone Properties, L.L.C cannot receive DEQ approval until they have evidence of Erosion and Sediment Control approval from Essex County.

8. The geotechnical report for the entire project is attached to this response. It was prepared on September 27, 2019 in anticipation that this project would be under construction by March 5, 2020 which was immediately following the Dolan’s closing on the property.

I trust that the enclosed information satisfactorily addresses your concerns of your letter dated April 22, 2020. As always, we remain available to provide further information as may be requested concerning this matter and continue to look forward to an amicable resolution of this almost five month long delay which is most certainly costing my clients time and money.

Sincerely,

Jeffrey L. Howeth, P.E., L.S., C.F.M.
President, J. L. Howeth, P.C.
April 30, 2020

Subject: RiverStone Project Site Plan Comments

Dear Jeff Howeth,

This office has reviewed the referenced plan in accordance with minimum standards set by the Tappahannock Zoning Ordinance and we have noted the following comments in the permitting process approval.

Zoning Permit approval with the following Agencies and Government Entities endorsements:

* VDOT
* DEQ
* Essex County: Land Disturbance Permit, E & S and Architectural Plans approval.
* Town of Tappahannock: Performance Bond, Storm Water Agreement, copy of recorded plats as to subdivide into parcels, provide open space calculation, Covenant as to easements of access and further detail of parking spaces.

Please contact me with any questions or comments.

Sincerely,

C. F. Sanders
Town of Tappahannock
Zoning & Code Compliance
May 22, 2020

BY EMAIL AND U.S. MAIL

Mr. and Mrs. Dolan
Riverstone Development LLC
11500 Bridgetender Drive
Henrico, VA 23233

Subject: Update on Application / Sprinkler Requirement

Dear Mr. and Mrs. Dolan,

We have been diligently conducting plan review for the Riverstone Apartments project based on your revised Building Permit application, dated 5/7/20 and received by our office on 5/12/20. There are additional documents required to complete the plan review as we discussed in our phone conference of 5/7/20 (see meeting minutes we distributed to you and your engineer) and again requested of you in our follow-up correspondence of 5/14/20 ("complete site plan drawings for 9 buildings, the hydrology report and the letter from VDOT to the Building Office").

We can issue no building permit until the site plan is approved, and the site plan is waiting for information we have requested, and you have promised to provide.

In addition, based on our understanding of the project based on what you have provided so far, we are reviewing your request to eliminate the fire protection automatic sprinkler system requirement under exception 903.2.8 of the Virginia Construction Code (VCC). After reviewing your engineer’s correspondence of 2/6/20, and your May submissions mentioned above, we have some questions that need to be clarified:

1 - The hydrant flow test report indicates a residual pressure of 28 psi at Hydrant A and a residual pressure of 20 psi at Hydrant B with a flow of 875 gpm. Since Hydrant B is upstream from Hydrant A, it appears the pressure at Hydrant B would be the higher reading. Maybe the designation for the hydrants was transposed; please confirm.

2 - The calculations indicate a pressure drop from the existing Hydrant B to the intersection of White Oak Drive and Hobbs Hole Drive of 5.6 psi (28 psi - 22.4 psi). Since the intersection is upstream from Hydrant B, it appears that the pressure would actually be higher. Should the 5.6 psi have been added to the Hydrant B value?
3 - The hydraulic calculations from the intersection to the project entrance and to the last hydrant are based on 10" pipe, but the site plan indicates a 8" line. Please clarify the size of the water line.
4 - How did the engineer determine the appropriate connection to the Tappahannock water supply? Has a determination been made by the Town on connection point?

Additionally, we received a request from Paul Richardson (our local fire chief) to verify the fire flow calculations for the project site and to ensure there is adequate fire flow available to extinguish a structure fire. This topic is addressed in Section 507 of the Virginia Statewide Fire Prevention Code. Please provide the fire flow calculation and the plan to provide the required fire flow to the site.

We are prepared to diligently review and make final decision on your site plan and building permit application, and on your request for an exception to the sprinkler requirement, but first we will need the completed site plans with utility details for the additional 4 buildings along with the information we have requested previously and herein to complete this review. Please forward as soon as possible so we can finalize our decisions.

Sincerely,

Alwyn Davis
Essex County Building Official
June 5, 2020

Riverstone Development LLC
11500 Bridgetender Drive
Henrico, VA 23233

Subject: Follow up to Requested Information for the Riverstone Apartments Project

Dear Mr. and Mrs. Dolan,

The following information was requested at a meeting on May 7, 2020 and has not been received:

- Hydrology Report
- Site Plan Detail for Phase 2
- VDOT Letter
- DEQ Letter

In addition, I also requested the following information in a letter dated May 21, 2020 and in a follow up letter dated May 29, 2020 and this information has also not been received:

- 1 - The hydrant flow test report indicates a residual pressure of 28 psi at Hydrant A and a residual pressure of 20 psi at Hydrant B with a flow of 875 gpm. Since Hydrant B is upstream from Hydrant A, it appears the pressure at Hydrant B would be the higher reading. Maybe the designation for the hydrants was transposed; please confirm.
- 2 - The calculations indicate a pressure drop from the existing Hydrant B to the intersection of White Oak Drive and Hobbs Hole Drive of 5.6 psi (28 psi - 22.4 psi). Since the intersection is upstream from Hydrant B, it appears that the pressure would actually be higher. Should the 5.6 psi have been added to the Hydrant B value?
- 3 - The hydraulic calculations from the intersection to the project entrance and to the last hydrant are based on 10” pipe, but the site plan indicates a 8” line. Please clarify the size of the water line.
- 4 - How did the engineer determine the appropriate connection to the Tappahannock water supply? It appears that a connection to the system near Tappahannock Boulevard would be equidistant to the site and provide more water capacity.
- Additionally, I received a request from Paul Richardson (local fire chief) to verify the fire flow calculations for the project site and to ensure there is adequate fire flow available to
extinguish a structure fire. This topic is addressed in Section 507 of the Virginia Statewide Fire Prevention Code. Please provide the fire flow calculation and the plan to provide the required fire flow to the site.

- I will need the completed site plans with utility details for the additional 4 buildings along with the information requested herein to complete this review. Please forward as soon as possible so we can finalize a decision.

If I do not receive the aforementioned information by Friday, June 12, 2020, I will have no choice but to deny the Building Permit request.

Sincerely,

Alwyn Davis
Essex County Building Official
June 13, 2020

Mr. Alwyn Davis, Building Official
Essex County
202 South Church Lane
P. O. Box 549
Tappahannock, Virginia 22560

Dear Mr. Davis:

On behalf of Riverstone Development, LLC, we wish to respond to your nearly identical requests for information of May 22, May 29 and June 5 regarding the Riverstone Development. As you stated at the conclusion of your letter of June 5, “If I do not receive the aforementioned information by Friday, June 12, 2020, I will have no choice but to deny the Building Permit request”. Therefore, we have intentionally failed to provide you the requested information by your deadline, effectively ending a six month saga of attempting to get you to make the simple decision of sprinklers versus firewall exception and eliminating Mr. Lombardo’s position of “nondecision”. Furthermore, what reinforces the arbitrary and capricious nature of the position that you and Mr. Lombardo have taken in this matter is that it took you until May 7, over four months, to provide the first written material of any deficiencies contained in the plans. I have compiled a history of your approval of any of my plans presented to Essex County for years to be approved within a matter of days, if not immediately upon presentation. However, since the date that I have lodged my formal complaint against you pertaining to your external soils business, the retaliation and monetary damage you have done to my business and reputation is substantial. This situation alone, coupled with the fact that some Essex County citizens appear reluctant not to use you for fear of the retaliation that I have been receiving, presumably at the approval of the Board of Supervisors, is a clear and obvious conflict of interest. However, since it is now confirmed in writing that you have denied the Building Permit, we request that you provide us with written comments as to all of the exact deficiencies found in the entire set of plans as required by the Virginia Construction Code.

My response to your comments is as follows:
1. Residual water pressures were taken by me and Jimmy Sydnor as well as the unwatched hydrant test authorized by Mr. Lombardo. The only comfort to this unwatched test is that the pressures and flows came up nearly identical, with the difference probably being they occurred on different days of the week. With no additional motive force to increase water pressure in the system, no substantial increase in pressure would be found in the potable water system at the proximal distances you suggest. Furthermore, I am not aware that you have any engineering expertise in potable water system construction and operation. If you do, I would like to have your opinion on whether the Hazen-Williams coefficient is accurate for this section? Also, which algorithm would be appropriate for the analysis for this section of this waterworks? Should we use a Hardy-Cross, University of Kentucky, linear or EPANET analysis? Since I was certified on EPA methodologies when I worked at the Office of Water Program for the Virginia Department of Health regulating public water and sewer for the Richmond Metropolitan area and I possess a completion certificate from the University of Kentucky for proficiency using Dr. Woods KVPipe software, who at the time was the instructor of the class, I would be interested in your thoughts on these matters.

2. While I appreciate your “grabbing at straws” concerning the accuracy of engineering of which I believe you possess no background in, let’s assume that you are correct. If you add 5 psi for your assumed number transposition and 5 psi for your assumed mathematical error, you would increase the pressure by 10 psi. Assuming that you agree with me that any required backflow preventer would utilize 5 psi to operate properly at each building, you would be left with 5 psi to operate the residential sprinkler system. And now that I have completed the NFPA’s water based sprinkler system design course (of which I will provide you a copy of my completion certificate since you previously accused me of not knowing how to design one of these types of sprinkler systems), I can unequivocally state that no sprinkler system of reasonable operational performance can be designed without the inclusion of pumps and other ancillary devices. Therefore, as stated multiple times before, since pressure and flow are NOT AVAILABLE for a sprinkler system, then the exception APPLIES for low-rise, low density R-2 uses with proper egress.

3. Since the flow cannot be increased in this line, an 8 inch pipe provided more scouring velocity for flushing than a 10 inch pipe. Again, if you disagree with my selection of Hazen Williams coefficients, please let me know as soon as possible.

4. Since the Town of Tappahannock requires that potable water mains be run completely across the property frontage, the Town of Tappahannock allows the professional engineer to determine the proper connection point which serves the project’s legal and regulatory requirements. However, this is specifically not construed to be additional requirements dreamed up by you to discriminate against this project and its owner. Therefore, I state that your observation of “equidistant” is wrong as you clearly do not understand the ordinances and policies of the Town of Tappahannock. However, we will be more than happy to revisit this situation again if you can convince the Town of Tappahannock to spend funds on extending the Town’s water lines to the Dolan’s property and have the Town wait to be reimbursed by the undeveloped property owners.
5. We are in receipt of the letter signed by Mr. Paul Richardson and Mr. Jimmy Brann, both of whom are employees of Essex County. Since the letter is on neither Essex County or Tappahannock / Essex Volunteer Fire Department (TEVFD) letterhead, I can only assume that these are the personal feelings of these men. And since the Statewide Fire Prevention Code has never been adopted by Essex County or the Town of Tappahannock according to the State Fire Marshal’s Office, I fail to understand why you would quote Code Section 507 which does not apply to this situation. My understanding is that only the State Fire Marshal’s Office can enforce any of the code you erroneously quote and that there is no “local fire official” as defined by that code (FOIA’ed by Mr. Dolan with negative response). If it is your desire for their letter to carry the importance that you appear to suggest it does, please have it retyped on letterhead of both organizations so that we understand that these are official agency positions and not just beliefs of individuals. This letter also appears discriminatory in nature as the President of the TEVFD has stated he is unaware of any other written review or comment on any other project in Essex County. He did mention that Chief Richardson may have verbally commented on the new mobile home park to be constructed on Mussell Swamp Road, but I seriously doubt that he suggested to them that they had to install substantial improvements to provide any fire flow beyond regulatory requirements. Having engineered several mobile home parks in my career, parks typically provide a fire department connection for withdrawal on the potable water supply tank for fire department use. Considering a mobile home park of approximately 150 units, the available water in a completely filled regulatory sized potable tank would be approximately 15,000 gallons which could deliver approximately 250 gallons per minute (gpm) for a 60-minute duration. Further reading of the comments made, it is also unclear why they believe that sprinklers are a better alternative. Since all of Essex County, with the exception of the Town of Tappahannock, is serviced by the TEVFD as a predominantly rural county with few water supplies available for fire protection, we all understand that the existing fire equipment is clearly skewed to the transportation of their own water supply to a “structure fire”. This concept is so well understood in rural firefighting that most departments are in possession of a water tanker truck, which is generally used solely for the purpose of ferrying water to the fire scene and drop tanks, which allow rapid dumping of the tanker truck so it can leave to get more water. Ultimately, a majority of the “structure fires” in rural settings occur outside the hose distance range of a fire hydrant and are successfully extinguished with a minimum of property damage by a highly trained and motivated group of individuals such as the TEVFD. Lastly, since the NFPA’s current initiative (www.NFPA.org) is to install NFPA 13D residential sprinkler systems in all one and two family dwellings, I am unclear if this is the Building Official’s and Essex County’s way of adding another expensive regulation upon the citizens of this County where they have already helped to pay for the emergency services equipment they need to adequately protect themselves. However, if the desire is to provide automatic sprinklers in all residential units, I can most certainly put my new NFPA design certificate to good use.
Mr. Alwyn Davis, Building Official  
Riverstone Development, LLC  
June 13, 2020  
Page 4

Mr. Davis, in closing, this all started because I complained about you and your soils business conducted here in the County where you also act as the Building Official. While this could have been easily resolved months ago by the County simply directing you not to do soils work in this County, through your actions against my company and the Dolan’s project, you have clearly positioned Essex County into a precarious legal position. It appears you have convinced Essex County officials to spend untold thousands of dollars on “independent” engineers who have backed out on you, attorney’s fees on as many as four attorneys assigned to this one simple appeal and potentially affected the reputations of several Essex County Supervisors and well-respected County individuals by joining them into your personal battle with me. Ultimately, now that a decision has been made, we can move on and hopefully approve this project as it should have been done months ago for the Dolan’s.

I trust that in the near future that you will be capable of separating your vendetta against me for filing a complaint against you and your sideline soils business from my client. While I can only anticipate your intent is to destroy my reputation and business with over six months of delay in answering the simple question of sprinklers versus fire walls, please remember that innocent people such as the Dolans, the Town of Tappahannock and all Essex County citizens are directly affected by your actions and inactions. Furthermore, your actions towards me, just as manifested immediately prior to the February Wetlands Board meeting for the entire public and Board to witness, are clear examples of the retaliation that I have previously spoken of that is expressly prohibited in the State and Local Government Conflicts of Interest Act and the Essex County Code of Conduct, not to mention Section 105.3 of the Virginia Construction Codes.

Sincerely,

[Signature]

Jeffrey L. Howeth, P.E., L.S., C.F.M.  
President, J. L. Howeth, P.C.
June 18, 2020

Jeffery Howeth
P.O. Box 1684
1019 Elm Street
Tappahannock, VA 22560

Re: Sprinkler System - Riverstone Development

Dear Mr. Howeth,

I have received your correspondence on behalf of Riverstone Development, dated June 13, 2020. The Building Department of Essex County is continuing its effort to provide a decision on the sprinkler exception request and would like to get resolution on this matter promptly for Mr. and Mrs. Dolan, therefore, I am keeping this correspondence focused on data required for that decision.

In my letter of May 22, I requested answers to four (4) points of clarification. I am again requesting specific answers to questions 1 and 2 as your correspondence of June 13 was vague with superfluous information that did not address the questions.

1 - On your hydrant flow test results of 2/3/20, is the data for Hydrant A and Hydrant B transposed? If so, please update the test results report and resubmit.

2 - There is some confusion about why you would calculate a pressure drop from the test hydrant location to the intersection of White Oak Drive and Hobbs Hole Drive. When performing the hydrant flow test, it appears that 875 gpm would be flowing from the White Oak Drive and Hobbs Hole Drive intersection to the hydrant location, creating a pressure drop due to friction. It is logical that the residual pressure at the intersection would be higher than at the hydrant location. Please calculate the residual pressure at the intersection based on results of your flow test. We do not need an explanation; just the data (875 gpm @ ___ psi residual pressure available at the intersection).

Please provide prompt and specific answers to this request so that we can make progress toward a decision. If you have questions, please do not hesitate to contact Wayne Verlander at our office.

Mr. and Mrs. Dolan from Riverstone Development have been copied in the email correspondence as well.

Thank you,

Alwyn W. Davis, Jr.
Building Official, Essex County
RIVERSTONE DEVELOPMENT

APPEAL TO

ESSEX COUNTY LBBCA

JUNE 17, 2020
VIRGINIA CONSTRUCTION CODE SECTION 106.1

"THE BUILDING OFFICIAL SHALL ENFORCE THIS CODE AS SET OUT HEREIN AND AS INTERPRETED BY THE STATE REVIEW BOARD."
WHAT THIS APPEAL IS ACTUALLY ABOUT

Virginia Construction Code section 903.2.8 Group R: An automatic sprinkler system installed in accordance with section 903.3 shall be provided throughout all buildings with a Group R fire area, EXCEPT FOR GROUP R-2 OCCUPANCIES LISTED IN THE EXCEPTIONS TO THIS SECTION WHEN THE NECESSARY WATER PRESSURE OR VOLUME, OR BOTH, FOR THE SYSTEM IS NOT AVAILABLE: (emphasis added)

Exceptions:

1. Group R-2 occupancies that do not exceed two stories, including basements that are not considered a story above grade, and with a maximum of 16 dwelling units per fire area. Each dwelling unit shall have at least one door opening to an exterior exit access that leads directly to the exits that serve that dwelling unit.

2. Group R-2 occupancies where all dwelling units are not more than two stories above the lowest level of exit discharge, and not more than one story below the highest level of exit discharge of exits serving the dwelling unit and a TWO HOUR FIRE BARRIER IS PROVIDED BETWEEN EACH PAIR OF DWELLING UNITS. (emphasis added)

THE ONLY QUESTION FOR THIS APPEAL – IS THE WATER PRESSURE AND/OR FLOW AVAILABLE OR NOT?
WHAT THIS APPEAL IS

NOT ABOUT

*THIS APPEAL IS NOT ABOUT REVIEWING OR APPROVING BUILDING PLANS
*THIS APPEAL DOES NOT REQUIRE ANY FURTHER INVESTIGATION OR INFORMATION TO ANSWER
*THIS QUESTION COULD HAVE BEEN, AND SHOULD HAVE BEEN ANSWERED IN JANUARY 2020
*THIS QUESTION CAN BE ANSWERED WITHOUT A SPRINKLER DESIGN BEING DONE
THE WATER PRESSURE AND FLOW ARE NOT AVAILABLE.

THERE ARE TWO DEFINITIVE REASONS:

1. TOWN OF TAPPAHANNOCK LETTER
2. JEFFREY HOWETH PROFESSIONAL ENGINEER OPINION/CALCULATIONS
Per NFPA 13R section 9.4.1, "The requirements of the public health authority having jurisdiction shall be determined and followed."

THE DISCUSSION SHOULD END AT THIS POINT, BUT...
JEFFREY HOWETH PE, LS, CFM ANALYSIS

J. L. Howeth P.C.
Consulting Engineering and Land Surveying

1341 Twin Oak Court
King George, Virginia 22485

540-779-7053

February 6, 2020

Mrs. Brenda Dulan
Riverstone Apartments
Tappahannock, Virginia 22560
VIA EMAIL

Dear Brenda:

Based upon the attached fire hydrant flow information for the existing fire hydrant located across from the Clubhouse on Hobbs Hole Drive which was independently tested on February 3, 2020 by J. L. Howeth, P.C. and the Town of Tappahannock (test results attached and video of test available upon request from Mr. Justin Sydnor, Town Manager), we have computed the required hydraulic analysis utilizing the Virginia Department of Health’s Waterworks Regulations for the design criteria of the potable water main for your Riverstone Apartment project. Based upon the existing hydrant flow of 875 gpm at a residual pressure of 20 psi and considering for pressure by moving to the point of physical connection and flow by subtracting 125 gpm for the estimated flow of the undeveloped Hobbs Hole Subdivision lots, we can compute the calculated water main pressure of 22.4 psi at the intersection of White Oak Drive and Hobbs Hole Drive connection point. Extending the water main northward along Hobbs Hole Drive to the proposed project entrance, we calculate the water main pressure to be 31.4 psi using an oversized 10" pipe to reduce friction. Further extending the water main to the rear of the project, the calculated water main pressure would be 21 psi at the last fire hydrant in the project, also utilizing the oversized 10" pipe. Furthermore, based upon my conversations with the State Building Official’s Office and the State Fire Marshal’s Office, NFPA 13R requires an EPC backflow preventer on the sprinkler line which creates a minimum pressure drop of between 5 and 10 psi at a previously calculated sprinkler flow rate of approximately 100 gpm. Since this value minus the residual pressure to the building to less than 20 psi minimum pressure required by Virginia Department of Health Waterworks Regulations, it is evident that the existing Town of Tappahannock potable water system cannot supply either the pressure or volume as defined in VCC Section 903.2.8.

Furthermore, since Mr. Justin Sydnor, Town Manager for the Town of Tappahannock, who clearly is the “public health authority having jurisdiction” and whose “requirements shall be determined and followed” (NFPA 13R Section 9.4.1), has already stated in writing that he cannot provide either the pressure or volume as stated in the above referenced VCC code section,
JEFFREY HOWETH CODE ANALYSIS

J. L. Howeth, P.C.
Consulting Engineering and Land Surveying
P. O. Box 1684 - 1014 Elm Street
Tappahannock, Virginia 22560

Jeffrey L. Howeth, P.E., L.S., C.E.M.
Telephone (804) 473-6387
Fax number (804) 473-6227

FIRE HYDRANT FLOW TEST
HOB'S HOLE DRIVE AT CLUBHOUSE
TOWN OF TAPPAHANNOCK, ESSEX COUNTY, VIRGINIA
FEBRUARY 3, 2020

<table>
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<tr>
<th>HYDRANT B</th>
<th>FLOW - GPM</th>
<th>RESIDUAL PRESSURE - PQ</th>
<th>RESIDUAL PRESSURE - PSI</th>
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<tr>
<td>875</td>
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</tr>
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</table>

Flow CALCULATED at 20 PSI
Date of hydrant test: February 3, 2020
Flow Hydrant Location: Hydrant B at Hobb's Hole Drive at Clubhouse
Static pressure reading at Hydrant A at Hobb's Hole Drive and Megan Street intersection: 48 PSI
Residual pressure readings taken at Hydrant A at Hobb's Hole Drive and Megan Street intersection
Flow Reading (using prior graphs) taken at Hydrant B
Water Main Diameter (in inches): 8
Fire Hydrant Outlet Size: 2-1/2" Hydrant Connection
Outlet Type: Smooth, Rounded
Coefficient of Discharge: 0.8
Hydrant A Residual pressure corrected to Hydrant B for friction only
(No elevation change based upon relatively flat topography)
HOWETH ANALYSIS CALCULATIONS

J. L. Howeth, P.C.
1424 Haxton Dr, P.O. Box 2266
Tappahannock, VA 22560
Telephone: (540) 443-5347
Fax: (540) 443-6237

Date: [Blank]

Sheet No. 1 of 2

DOUBLE FLOOD TO POINT A IS

\[ \text{Flood to Point A} = \left( \frac{52 \text{ GMP}}{\text{Building}} \right) \times \left( \frac{4 \text{ GMP}}{\text{Building}} \right) = 4.8 \text{ GPM} \]

\[ \text{250 GPM Average} = \left( \frac{52 \text{ GPM}}{\text{Building}} \right) \] (9 Buildings) = 480 GPM

\[ \text{250 GPM Average} + 120 \text{ GPM} \] (2 Buildings) = 370 GPM

\[ \text{20 GPM Average} + 120 \text{ GPM} \] (2 Buildings) = 280 GPM

\[ \text{Flood to Point B} = \left( \frac{52 \text{ GPM}}{\text{Building}} \right) \times \left( \frac{4 \text{ GPM}}{\text{Building}} \right) = 3.8 \text{ GPM} \]

\[ \text{Flood to Point C} = \left( \frac{52 \text{ GPM}}{\text{Building}} \right) \times \left( \frac{4 \text{ GPM}}{\text{Building}} \right) = 2.8 \text{ GPM} \]

\[ \text{Net Flood} \]

\[ \text{Net Flood} = \text{Volume Above} + \text{250 GPM Average} \times 458 \text{ GPM} \]

\[ \text{Net Flood} \]
THE COUNTY "INDEPENDENT" THIRD-PARTY TEST

From: Joe Beck
Sent: March 2, 2020
To: Matt Farmer (and others)
Subject: Hobbs Hole Flow Test Report

There is enough water pressure and flow to protect the proposed two-story apartment building with an NFPA 13R system. Unless Essex requires reduced pressure backflow preventers or very large amount of safety factor design should not be an issue. There are so many variations of sprinkler type and layout that the exact figures cannot be provided until a full design is completed. Typically a four sprinkler residential design will require only 50-80 gpm and 25-30 psi with an additional 100 gpm needed for outside hose allowance. This information is provided at no cost. Further detailed analysis and/or a complete design for the fire sprinkler system will involve a fee.

FACTS
*APPLICANT “BANNED” FROM TEST ON PUBLIC STREET
*TEST DONE BY SPRINKLER TECH
*LOWER PRESSURE REPORTED THAN OUR TEST
*TWO SENTENCE REPORT-THE REST IS NOT RELATED
*NO MATH CALCULATIONS
*INCORRECT ASSUMPTIONS
*JOE BECK, PC WITHDREW FROM FURTHER WORK ON PROJECT
OUR TEST

COUNTY TEST

One Building
No run accounted for

9 Buildings

Approximately 3500 feet of run from hydrant to building
ISSUANCE OF THE BUILDING PERMIT.

OTHER MATTERS RELATED TO THE TODAY. THIS WILL NOT AFFECT ANY ASK THE LBBCA TO CONFIRM IT CONTAINED IN VCC CODE 903.2.8. WE COMPLY WITH THE EXCEPTION.

CONCLUSION
January 13, 2020

Alwyn W. Davis, Jr.
Certified Building Official
Essex County, Virginia

Re: Dolan Properties- Hobbs Hole

Dear Mr. Davis:

Your correspondence of January 13, 2020 to Bob Himmel with a copy to Jeff Howeth has been referred to me for review and response.

Perhaps Brenda and I should have gotten more involved in this discussion earlier, but it is now clear that the sprinkler issue needs to be resolved so that the project can go forward.

Here are the facts as they now stand:

1. "Section 903.2.8 of the Virginia Construction Code clearly states that a sprinkler system is required in all R-2 occupancies EXCEPT (emphasis added) when the necessary water pressure or volume, or both, for the system is not available." (From your email)
2. Mr. Sydnor, Town Manager, has reported, and you understand, that the available water pressure is 52 psi. (From your email)
3. J. L. Howeth, P.C. has calculated the necessary pressure and flow in accordance with the ISO fire flow calculator, and has given his opinion as a licensed professional engineer that the water pressure and flow provided by the county IS NOT sufficient to allow for the buildings in the Hobbs Hole project to be sprinkled.
4. The documented insufficient pressure and flow available from the Town of Tappahannock clearly place this project squarely under exception 1 of Virginia Construction Code Section 903.2.8.

5. You have recommended that additional studies be done to determine if a system can be designed to possibly allow for sprinkling despite the documented facts above. (From your email)

We believe there is more than enough information for you to make the decision on the sprinkler, and any such additional study and redesign would be cost prohibitive. Our estimates range in excess of $200,000. In addition, the Code does not require us to design a system to counteract the Town's inability to provide the necessary pressure and flow. Exception 1 does not contain qualifications; it clearly says if there is not enough pressure/flow, then the exception applies.

Consequently, we do not believe it is necessary to engage any further studies related to the sprinkling of these buildings.

Please provide us with a written decision either allowing us to proceed with no sprinkler system, as provided by the Code, or disallowing our request.

We and our engineers are happy to meet with you to discuss this further if you would like.

Best Regards,

TIMOTHY J. DOLAN

Timothy J. Dolan, J.D.
Member/Manager
March 5, 2020

Michael A. Lombardo  
Essex County Administrator  
County of Essex, VA

VIA EMAIL

Mr. Lombardo:

Again, let me thank you for providing the information from the Hydrant Flow Test performed by cTec Fire Protection on February 27.

Our initial opinion after review of the information you provided is that it fully supports our belief that there is not enough pressure and/or flow for sprinkler systems for the Riverstone project.

It is obvious that cTec was not given much of the pertinent information needed to make the determination of this issue, or either he chose to ignore it. His four-sentence summary opinion appears to be based on misinformation and/or a lack of knowledge of the pertinent facts. Not surprisingly, because of that, it is inaccurate.

Sentence 1: “There is enough water pressure and flow to protect the proposed two-story apartment building with an NFPA 13R system.” FACT: The project contains a total of 150 units and the pressure and flow must be calculated to provide for the entire project, not just one two-story building.

Sentence 2: “Unless Essex [he should have referenced the Town of Tappahannock here] requires reduced pressure backflow preventers or a very large amount of safety factor design should not be an issue.” FACT: The Town DOES require reduced pressure backflow preventers and other safety factors. Does this mean he agrees the exception applies?

Sentence 3: “There are so many variations of sprinkler type and layout that the exact figures cannot be provided until a full design is completed.” FACT: This is the same statement that Mr. Davis made months ago, and it is still as irrelevant now as it was then. The problem we are facing is that there is not enough pressure and flow to get the water TO THE BUILDING. This
has been calculated and the water is NOT available, as the Tappahannock Town Manager has repeatedly declared in writing.

   Sentence 4: “Typically a four-sprinkler residential design will only require 50-80 gpm and 25-30 psi with an additional 100 gpm needed for outside hose allowance.” FACT: See response to Sentence 3.

   Because this opinion was based on a lack of pertinent information, and that we were not allowed to attend the test, we have the following questions for Mr. Beck:

   1. Was the pressure/flow corrected to the point of connection?
   2. What distance was used for the piping to the northeast building, which will be the first building to be constructed?
   3. Our VDH calculations clearly stated that an RPZ backflow preventer would be required for these sprinklers in accordance with the Town's Cross Connection Program monitored by VDH. Why was this omitted from the Engineer's analysis?
   4. The Town requires a large safety factor. Why was this omitted from the Engineer's analysis?
   5. It was clearly stated that the northeast building only had 32 gpm of available flow at 21 psi based upon the VDH calculations. How does the Engineer determine that there is enough pressure and flow for a sprinkler system? Where are the Engineer's calculations regarding the potable water system hydraulics? These calculations should be provided and issued under the seal of the Engineer for review by all parties involved.
   6. What values did the Engineer use for the domestic demand? Were they computed from actual fixture counts or estimated? Also, did the Engineer use the AWWA high or low flow rate curve for demand?
   7. What minimum flow rate did the Engineer use for the outside hydrant flow allowance. The NFPA 13R standard requires 100 gpm hose allowance while the VDH Waterworks Regulations requires 250 gpm for a hydrant to be installed at all.
   8. Why wasn't the Professional Engineer present at the hydrant flow test?
   9. Why was a sprinkler company engaged to perform the hydrant flow test instead of a full-service engineering firm with a Professional Engineer present during the test? Also, is the Professional Engineer employed by the sprinkler company? If not, did the Professional Engineer disclose his relationship in writing regarding the sprinkler company prior to Essex County contracting him to do the work?
   10. Was this analysis for one building or all nine buildings supported by the zoning of the property?
   11. Why was the Hydrant Flow Test Report performed for private fire service mains instead of public water mains?
   12. Why was NFPA 13R, section 9.4.1 ignored? Mr. Beck references 13R but fails to comply with this section.

   We propose that Mr. Beck attend a meeting during which all sides would have a chance to ask questions about the test. His four-sentence opinion without any underlying information is woefully inadequate to base the conclusion on (unless of course, you agree with us that it supports our side).
Please let us know when we can schedule a meeting with all sides.

Regards,

[Signature]

Timothy J. Dolan, J.D.
Member/Manager
Riverstone Development LLC
15 June 2020

Tim and Brenda Dolan
Dolan Properties
P.O. Box 377
Glen Allen, VA 23058

Re: Riverstone Apartment Building, Tappahannock, VA, code compliance

Tim, Brenda:

It appears from the Town Manager’s letter of 2/13/20 that the town is not able to supply adequate water to support a compliant fire suppression for your apartment project. Therefore paragraph 903.2.8.1, which allows your project to be designed without a fire suppression system, applies. To the best of our knowledge the construction documents we prepared comply with the 2015 Virginia Construction Code.

We are glad to respond to review comments from the town regarding their review of the construction documents for a building permit. If we can be of any further help, please let me know.

Sincerely yours:

[Signature]

Robert Himmel, AIA
Principal
Documents Submitted
By Essex County
VIA electronic mail

W. Travis Luter Sr., C.B.C.O.
Department of Housing & Community Development
Division of Building & Fire Regulation
State Building Codes Office
600 East Main Street, Suite 300
Richmond, Virginia 23219
Email: travis.luter@dhcd.virginia.gov

Re: Application for Appeal to the Review Board for Timothy Dolan
Appeal No. 20-01

Dear Mr. Luter:

In response to your email dated May 19, 2029, please find enclosed a letter from the Secretary of the Essex County Local Board of Building Code Appeals (LBBCA) confirming that a hearing will be conducted virtually on June 3, 2020 at 10:00 am. The Secretary previously confirmed the availability of all parties for this date and time.

The LBBCA will hear two appeals on this date: (1) the appeal filed by Mr. Dolan on April 10, 2020, upon which the application to the State Review Board filed by Mr. Dolan on May 11, 2020 was based; and (2) a second appeal filed by Mr. Dolan on May 1, 2020, pertaining to alleged violations of the Building Code. That latter appeal and the County Administrator's response thereto are attached hereto for your records.

Sincerely,

Christopher M. Mackenzie

Enclosures
cc: Andrew R. McRoberts, Esquire, King William County Attorney
    Michael Lombardo, King William County Administrator
    Timothy Dolan
May 27, 2020

Mr. and Mrs. Dolan
11500 Bridgetender Drive
Henrico, VA 23233

Re: Essex County Local Board of Building Code Appeals Meeting

Dear Mr. and Mrs. Dolan,

We will be holding a Local Board of Building Code Appeals meeting on, Wednesday, June 3, 2020 at 10am regarding the attached appeals that you submitted dated April 10, 2020 and May 1, 2020. This meeting will be held via a Zoom Meeting, the log in information for the meeting is:

Dial:
+1 646 876 9923 (US Toll)
+1 301 715 8592 (US Toll)
+1 312 626 6799 (US Toll)
+1 669 900 6833 (US Toll)
+1 253 215 8782 (US Toll)
+1 346 248 7799 (US Toll)
Meeting ID: 990 2162 0626
Password: 181101

Please let me know if you have any questions.

Thank you,

Heather Hostinsky
Essex County, Virginia
202 South Church Lane
Post Office Box 1079
Tappahannock, Virginia 22560

Established 1692

SENT VIA EMAIL.

May 14, 2020

Dear Mr. Dolan:

I am in receipt of a copy of your letter dated May 1, 2020, entitled "Notice of Appeal," which you have asked to be accepted as another appeal to the County’s Local Board of Building Code Appeals ("LBBCA") under Section 119.5 of the "Virginia Construction Code" (Part I of the Uniform Statewide Building Code, or "USBC").

As I said in my letter to you dated April 10, 2020, the Board of Supervisors adopted a continuity of government ordinance due to the COVID-19 emergency. This ordinance suspends deadlines for local public bodies in Essex County during the pendency of the ordinance, including the otherwise applicable 30-day deadline for the LBBCA to consider appeals. We will be forwarding your appeals to the LBBCA, which I am sure will meet in the near future.

Unfortunately, the subjects of your intended appeal are not matters which may be appealed to the LBBCA. The LBBCA decides appeals which feature the application by the building official of the building code, not alleged violations of the sort asserted in your May 1, 2020 letter. Section 119.5 states as follows:

Any person aggrieved by the local building department’s application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA.

The applicant shall submit a written request for appeal to the LBBCA within 30 calendar days of the receipt of the decision being appealed.

As you can see, appeals are not made from "violations." Appeals are made from either an "application of the USBC or the refusal to grant a modification to the provisions of the USBC," neither of which you describe in your "Notice of Appeal." Bottom line, there needs to be a "decision," which there has not yet been. We anticipate the application being decided soon, as my staff discussed with you in the very helpful conference call with you on May 7, 2020. For these and other reasons, the County will oppose your appeal and ask that it be dismissed. If you would like to withdraw your appeal, please let me know. If not, it will be forwarded to the LBBCA for its consideration along with our request of dismissal.

Respectfully,

Michael A. Lombardo
County Administrator

cc: M. Farmer, Essex Planning Director
    A. Davis, Essex Building Official
May 29, 2020

Essex County
202 S. Church Lane
Tappahannock, VA 22560

VIA Email and Hand Delivery

Re: Essex County Local Board of Building Code Appeals Meeting

Dear Essex County,

After consulting with the Chairman of the Local Board of Building Code Appeals it is decided to hear appeals dated April 10, 2020 and May 1, 2020 at the same meeting. Since the party requesting the appeal has requested the 14 day notice prior to the meeting for the appeal dated May 1, 2020 we will be pushing the meeting from June 3, 2020 out to June 17, 2020 at 6pm. The meeting will be held at the Essex County School Board Office located at 109 Cross Street, Tappahannock, VA 22560. If anything changes and we are not able to meet in person a Zoom Meeting will be scheduled for the same date and time.

Thank you,

[Signature]
Heather Hostinsky
Jeffrey L. Howeth  
P.O. Box 1684  
Tappahannock, VA 22560

Via Email and Certified Mail

Dear Mr. Howeth,

This will confirm receipt of your letter dated June 13, 2020. You have failed to deliver the site plan that was promised and to respond to the questions presented in my earlier correspondence dated May 14, 22, 29, & June 5th. Due to the lack of information and incompleteness, your clients’ application is hereby denied. If you choose to reapply, I would recommend a complete application with answers to my previous questions including a final site plan when the application is submitted.

Yours Truly,

Alwyn W. Davis Jr., CBO Essex County
Mr. and Mrs. Dolan
11500 Bridgetender Drive
Henrico, VA 23233

Via Email and Certified Mail

Dear Mr. Dolan,

This will confirm the receipt of your letter dated June 14, 2020. You have failed to deliver the site plan that was promised and to respond to the questions presented in my earlier correspondence dated May 14, 22, 29, & June 5th. Due to the lack of information and incompleteness, your application is hereby denied. If you choose to reapply, I would recommend a complete application with answers to my previous questions including a final site plan from Mr. Howeth.

Yours Truly,

Alwyn W. Davis Jr., CBO Essex County
ESSEX COUNTY BOARD OF BUILDING APPEALS
MEETING OF JUNE 17, 2020 6:00 P.M.
ELECTRONIC MEETING
TAPPAHANNOCK, VIRGINIA 22560
MINUTES

Present:
David Jones - Chairman
Marvin Edgar Martz
Steven Laffoon
George Jennings
David M. Rector

Absent:
Travis Medlin

Also Present:
Alwyn Davis – Essex County Building Official
Wayne Verlander – Building Inspector
Heather Hostinsky – Building and Zoning Office Manager
Chris MacKenzie – Essex County Legal Counsel

Call to Order

Chairman Jones called the Essex County Board of Building Appeals meeting of June 17, 2020 to order at 6:00 p.m. and asked for a roll call of the Board members and a quorum was met.

Meeting Agenda

Tim Dolan wanted to clarify the timing of the presentation, how much time would he have to make his presentation, and then the rebuttal by Mr. Davis. Chairman Jones asked that everyone keep their comments brief. Mr. Dolan asked that people identify themselves. Mr. MacKenzie of Sands Anderson stated that he represents the County of Essex and therefore cannot advise the Board of Building Appeals.

Chairman Jones asked the Board for a motion to approve the last meeting minutes. David Rector so motioned. George Jennings seconded the motion. AYES: 5 NAYES: 0 ABSENT: 1

Chairman Jones put forth rules of the meeting 1) state you name 2) allow persons to finish 3) say “I’m finished” when done and 4) keep comments brief.

Appeal # 4-10-20 Timothy J. Dolan

Name and address of owner:
Riverstone Development LLC
11500 Bridgetender Drive
Henrico, VA 23233
Name and Address of person appealing:
Timothy J. Dolan
11500 Bridgetender Drive
Henrico, VA  23233

Location of Property:
15.3 acres located on Hobbs Hole Drive
Tappahannock, VA  22560

Discussion

Chairman Jones turned the floor over to Timothy J. Dolan. Mr. Dolan thanked Ms. Hostinsky for all her help in this matter. He would like to bring to everyone’s attention the fact that the County continues to avoid making a decision. He said it is not about the building permit application but that Mr. Davis refuses to give an answer whether the exception is valid. The building permit discussion can only take place after the decision is made for either firewalls or sprinklers. The question is whether the apartment complex project qualifies for the exemption for installation of fire sprinklers. Mathematically the engineer has determined that the water flow is not sufficient for the sprinkler system. Jimmy Sydnor, the Tappahannock town manager, states that he cannot guarantee the required water pressure needed. An independent third party water test was done on behalf of the County and performed by a sprinkler company. They were given incorrect information to make an informed decision.

Chairman Jones turned the floor over to Jeff Howeth, who is contracted by Timothy Dolan. Mr. Howeth stated that water must get to the buildings and that Jimmy Sydnor could not guarantee water flow and water pressure. 52 psi is the static pressure. Residential pressure is always lower. There must be a 250 gallon per minute flow for a water hydrant. Virginia code states that the water must be available.

David Rector asked Mr. Howeth if a diverter valve could be used for the domestic use. Mr. Howeth answered in the negative citing that the domestic use cannot be interrupted. Mr. Rector said the flow would only be disrupted during a fire and a diverter could be used at each of the nine buildings. Mr. Howeth said he doesn’t think it can be done and he has never seen it. Mr. Rector stated that he has seen it done and thinks it should be. Mr. Dolan said its sounds expensive and according to the code, they are not required to. Mr. Howeth reiterated that a domestic flow is required by code and the minimum flow per hydrant is 250 gallons per minute.

Chairman Jones said that the overall project has to be considered. Can just the first two buildings have sprinklers and the rest don’t? Is that possible? Mr. Howeth said the proposal on the table now is for a one hour fire wall. The firewalls will give 60 minutes each, so up to four hours for each building. Sprinklers would only give 30 minutes of water – period.

Chairman Jones turned the floor over to Alwyn Davis, Essex County Building Official. Mr. Davis stated that he has asked for information from the Dolans and has not received it to date. Mr. MacKenzie, counsel for Essex County, stepped in and said the other appeal for tonight’s meeting has been withdrawn. He said the Building application is very important. This Board can affirm, refuse, or amend a decision by the Building official however inaction is not an action. The County has been very attentive and needs information. The County’s job is the health, welfare and safety of its citizens. Mr. Davis has sent four follow up requests. As of June 5, 2020, the entire application was denied due to lack of
information from the applicant. There is no decision for the Board to affirm, refuse, or amend; therefore the Board should dismiss the application for appeal.

Mr. Rector totally agreed with Mr. MacKenzie.

Mr. Dolan said everything Mr. MacKenzie said is hogwash. He asked Chairman Jones if in the training they received was it discussed that an inaction is an action, as he has been advised from the State Technical Review Board that an inaction by a Building Official is an action. Mr. Dolan also stated that Mr. MacKenzie is completely wrong. How can we draw plans if we don’t know what to provide.

Mr. Howeth said there was a decision of denial due to VDOT and the DEQ. Why are there firewalls in the code at all?

Mr. Rector made the motion to dismiss the application of appeal due to the fact that there was not a decision to appeal. Mr. Jennings seconded the motion. A roll call vote on the motion was made:

- David Rector – Yes
- Steven Laffoon – Yes
- George Jennings – Yes
- Marvin Edgar Martz – Yes
- David Jones – Yes

Travis Medlin – Absent

The motion carried.

Old Business

None

New Business

None

Adjourn

Mr. Dolan asked for the Board’s decision in writing. Mr. MacKenzie stated that he has a form that he can provide the Board.

Chairman Jones asked for a motion to adjourn the meeting of the Board of Building Appeals. Mr. Rector made the motion to adjourn the meeting and Mr. Jennings seconded the motion. AYES: 5 NAYES: 0 ABSENT: 0

The meeting was adjourned.
Wayne Verlander

From: Alwyn Davis  
Sent: Wednesday, January 15, 2020 9:05 AM  
To: Wayne Verlander  
Subject: FW: Fire Flow Calculations  
Attachments: Fire Flow Calculator.xlsx

From: Jimmy Sydnor <tappzone@tappahannock-va.gov>  
Sent: Monday, January 6, 2020 2:27 PM  
To: Alwyn Davis <awdavis@essex-virginia.org>  
Subject: FW: Fire Flow Calculations

From: Jeffrey Howeth [mailto:jhoweth@msn.com]  
Sent: Friday, January 03, 2020 3:17 PM  
To: dolanproperties; Jimmy Sydnor; Frank Sanders  
Subject: Fire Flow Calculations

Brenda, the attached file based upon the Insurance Services Organization (ISO) fire flow calculator indicates that the sprinkler allowance for a single building would be approximately 800 gpm. Also, sprinkler systems usually operate at approximately 70 to 80 psi due to their smaller pipe diameters.

By copy of this to the Tappahannock Town Manager, please verify that the Town's water supply would provide the following needed fire flows for your apartment project.

Thanks, Jeff

Jeffrey L. Howeth, P.E., L.S., C.F.M. President, J. L. Howeth, P.C. 1019 Elm Street P. O. Box 1684  
Tappahannock, Virginia 22560 804-443-6367 (Office) 804-241-4160 (Cell)
**FIRE & RESCUE**

**ISO Fire Flow Worksheet**

*Needed Fire Flow Work Sheet (ISO formulas)*

\[ NFF = (C)(O)(X_i+P_i) \]

\[ C = 18F(A_i)^{0.5} \]

<table>
<thead>
<tr>
<th>Address</th>
<th>Hobbs Hole Drive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Name</td>
<td>Riverstone Apartments</td>
</tr>
<tr>
<td>Occupancy Type</td>
<td>Apartments</td>
</tr>
<tr>
<td>Construction Type</td>
<td>SB</td>
</tr>
</tbody>
</table>

| Number of Stories | 2 |

**STEP 1**

Take the area, which is 100% sq. ft. of the first floor plus the following percentage of the total area of the other floors.

**First Floor Area in Sq. Ft**

10005 Sq. Ft. @ 100%

**Additional Floors**

Enter total area in sq. ft for all other floors

10005

**Total Area Entire Building**

15007.5

**STEP 2**

\[ F = \text{Coefficient related to the class of construction as determined by using the construction type found in SBCCI} \]

<table>
<thead>
<tr>
<th>Construction Type</th>
<th>Class</th>
<th>F Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frame</td>
<td>1</td>
<td>1.5</td>
</tr>
<tr>
<td>Joist Masonry</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Non-combustible</td>
<td>3</td>
<td>0.8</td>
</tr>
<tr>
<td>Heavy Timber</td>
<td>4</td>
<td>0.8</td>
</tr>
<tr>
<td>Modified fire resistance</td>
<td>5</td>
<td>0.6</td>
</tr>
<tr>
<td>Fire resistive</td>
<td>6</td>
<td>0.6</td>
</tr>
</tbody>
</table>

**Construction Class**

1

**Square Root of the Area x F x 18**

3250 = C Value
<table>
<thead>
<tr>
<th>STEP 3</th>
<th>Multiply result of rounded off GPM by the Occupancy Factor (Oi)</th>
<th>Occupancy Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Noncombustible (C-1)</strong> = No active fuel loads such as storage of asbestos, clay, glass, marble, stone, or metal products.</td>
<td></td>
<td>0.75</td>
</tr>
<tr>
<td><strong>Limited - Combustible (C-2)</strong> = Limited fuel loads such as airports, apartments, art studios, auto repair, auto showroom, avairies, banks, barber shops, beauty shops, churches, clubs, cold storage warehouses, day care center, educational occupancies, gas stations, green houses, health clubs, hospitals, jails, libraries, medical labs, motels, museums, nursing homes, offices, radio stations, recreation centers, and rooming houses.</td>
<td></td>
<td>0.85</td>
</tr>
<tr>
<td><strong>Combustible (C-3)</strong> = Moderate fuel loads such as auto part stores, auto repair training center, bakery, bookstores, bowling centers, casinos, commercial laundries, contractor equipment storage, dry cleaners with no flammable fluids, leather processing, municipal storage buildings, nursery sales stores, pavilions, pet shops, photographic supplies, printers, restaurants, shoe repair, supermarkets, theaters, vacant buildings, and most wholesale &amp; retail sales occupancies.</td>
<td></td>
<td>1.0</td>
</tr>
<tr>
<td><strong>Free-Burning (C-4)</strong> = Active fuel loads such as aircraft hangers, cabinet making, combustible metals, dry cleaners using flammable fluids, feed stores, furniture stores, kennels, lumber, packaging and crating, paper products manufacturing, petroleum bulk distribution centers, tire manufacturers, tire recapping or retreading, wax products, and wood working shops.</td>
<td></td>
<td>1.15</td>
</tr>
<tr>
<td><strong>Rapid-Burning (C-5)</strong> = Contents that burn with great intensity, spontaneously ignite, have flammable or explosive vapors, or large quantities of dust such as ammunition, feed mills, fireworks, flammable compressed gases, flammable liquids, flour mills, highly flammable solids, matches, mattress factories, nitrocellulose-based products, rag storage, upholstery shops, &amp; waste paper storage.</td>
<td></td>
<td>1.25</td>
</tr>
</tbody>
</table>

| Occupancy Class Selected (1 thru 5) | 2 |
| GPM x Oi | 2762.5 |
ISO Fire Flow Worksheet

Needed Fire Flow Worksheet (ISO formulas)

**STEP 4**
Now consider the exposure factor (Xi) - (Separation between buildings)

<table>
<thead>
<tr>
<th>Distance (feet to the exposed building)</th>
<th>Xi</th>
<th>&gt;3 stories</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-10</td>
<td>0.22</td>
<td>0.47</td>
</tr>
<tr>
<td>11-30</td>
<td>0.18</td>
<td>0.43</td>
</tr>
<tr>
<td>31-60</td>
<td>0.13</td>
<td>0.38</td>
</tr>
<tr>
<td>61-100</td>
<td>0.09</td>
<td>0.34</td>
</tr>
</tbody>
</table>

Distance, in feet, to the exposed building | 21.67

Xi (from table) | 0.18

Multiply GPM from step 4 by (1+Xi)

Total From Step 4 | 3260

**STEP 5**
Approved Fire Sprinkler System? (Y or N) | Y

Take fire flow from step 5 and multiply by sprinkler credit of 0.25

Sprinkler credit | 815

Now subtract sprinkler credit from fire flow in step 4

**NEEDED FIRE FLOW** | 2500 GPM
January 28, 2020

Mrs Brenda Dolan  
Riverstone Apartments  
Tappahannock, Virginia 22560  
VIA EMAIL

Dear Brenda:

Based upon the attached fire hydrant flow information for the existing fire hydrant located behind Walmart on White Oak Drive provided by Mr. Jimmy Sydnor, we have computed the required hydraulic analysis utilizing the Virginia Department of Health’s Waterworks Regulations for the design criteria of the potable water mains for your Riverstone Apartment project. Based upon the existing hydrant flow behind Walmart of 10.74 gpm at a residual pressure of 33.5 psi, we can compute the calculated water main pressure of 31.5 psi at the intersection of White Oak Drive and Hobbs Hole Drive. Extending the water mains northward along Hobbs Hole Drive to the proposed project entrance, we calculate the water main pressure to be 24.5 psi. Further extending the water mains to the rear of the project, the calculated water main pressure would be 20.5 psi at the last fire hydrant in the project. This value is just barely over the 20 psi minimum residual pressure required to be maintained in the potable water system by the Virginia Department of Health’s Waterworks Regulations.

Based upon maintaining these minimum pressures in the potable water system, the maximum allowance for the automated sprinkler system would be approximately 500 gpm after subtracting the required domestic flow for each building as calculated using the typical fixture count method described in Section 9.3 of NFPA 13R. However, using Section 7.1.1.1 of the NFPA 13R standard which requires a minimum of 1000 gpm (1000 sf buildings x 2 floors x 0.05 gpm/sf discharge density) sprinkler demand, it becomes obvious that the Town of Tappahannock’s Water System is not capable of providing the necessary volume (or pressure above the legal minimum) to accommodate an automated sprinkler system, thereby qualifying for the exemption contained in Section 903.2.8 of the Virginia Construction Code.

Please let me know if you have any further questions regarding this matter.

Sincerely,  

Jeffrey L. Howeth, President, J. L. Howeth, P.C.  
Virginia Licensed Professional Engineer  
Virginia Licensed Land Surveyor  
Nationally Certified Floodplain Manager
(No subject)

Jimmy Sydnor <tappzone@tappahannock-va.gov>
Tue 1/28/2020 12:04 PM
To: 'Jeffrey Howeth' <jlhoweth@msn.com>
1074 gallons per min. Hydrant at the rear of Wal-Mart

Jimmy Sydnor

PART OF PRIVATE INFRASTRUCTURE - CANNOT CONNECT TO SYSTEM HERE.
HYDRAULIC ANALYSIS - VDN
RIVERSTONE APARTMENTS
TOWN OF TAPPAHANNOCK

BASAL ON EXISTING HYDRANT PRESSURE
AND FLOW PROVIDED BY JIMMY SRJOCO,
TOWN MANAGER, FIRE HYDRANT PENDING
WALNUT FLOWS 1074 GPM @ 33.5 PSI
RESIDUAL PRESSURE

A) EXISTING HYDRANT @ INTERSECTION OF
WHITE OAK DRIVE AND TOBACCO DRIVE (750 GPM)

33.5 PSI - \[ \frac{(115 \text{ HP})}{100 \text{ FT}} \times 2.31 \] = 31.5 PSI

B) INTW WHITE OAK AND TOBACCO (750 GPM)

31.5 PSI - \[ \frac{(94 \text{ HP})}{100 \text{ FT}} \times 2.31 \] = 24.5 PSI

C) PROJECT ENTRANCE TO LAST HYDRANT (50 GPM)

24.5 PSI - \[ \frac{(50 \text{ HP})}{100 \text{ FT}} \times 2.31 \] = 20.5 PSI

Therefore, in order to maintain 70 PSI
minimum in possible drift, mains should
maintain domestic flow to back building,
single building sprinkler allowance would
be 300 GPM maximum, substantially less than
500 GPM required by Member 7-1-1.
Figure 4-5  Water customer data sheet

<table>
<thead>
<tr>
<th>Fixture Description</th>
<th>Fixture Value</th>
<th>No. of Fixtures</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bathtub</td>
<td>8</td>
<td>x 32</td>
<td>= 288</td>
</tr>
<tr>
<td>Bedpan Washers</td>
<td>10</td>
<td></td>
<td>=</td>
</tr>
<tr>
<td>Bidet</td>
<td>2</td>
<td></td>
<td>=</td>
</tr>
<tr>
<td>Dental Unit</td>
<td>2</td>
<td></td>
<td>=</td>
</tr>
<tr>
<td>Drinking Fountain - Public</td>
<td>2</td>
<td></td>
<td>=</td>
</tr>
<tr>
<td>Kitchen Sink</td>
<td>2.2</td>
<td>x 16</td>
<td>= 35.2</td>
</tr>
<tr>
<td>Lavatory</td>
<td>1.5</td>
<td>x 32</td>
<td>= 48</td>
</tr>
<tr>
<td>Showerhead (Shower Only)</td>
<td>2.5</td>
<td></td>
<td>=</td>
</tr>
<tr>
<td>Service Sink</td>
<td>4</td>
<td></td>
<td>=</td>
</tr>
<tr>
<td>Toilet - Flush Valve</td>
<td>3.5</td>
<td>x 32</td>
<td>= 128</td>
</tr>
<tr>
<td>- Tank Type</td>
<td>4</td>
<td></td>
<td>=</td>
</tr>
<tr>
<td>Urinal - Pedestal Flush Valve</td>
<td>16</td>
<td></td>
<td>=</td>
</tr>
<tr>
<td>- Wall Flush Valve</td>
<td>18</td>
<td></td>
<td>=</td>
</tr>
<tr>
<td>Wash Sink (Each Set of Faucets)</td>
<td>4</td>
<td>x 16</td>
<td>= 64</td>
</tr>
<tr>
<td>Dishwasher</td>
<td>2</td>
<td>x 16</td>
<td>= 32</td>
</tr>
<tr>
<td>Washing Machine</td>
<td>6</td>
<td>x 16</td>
<td>= 96</td>
</tr>
<tr>
<td>Hose (50 ft Wash Down) - 1/2 in.</td>
<td>5</td>
<td>x 2</td>
<td>= 10</td>
</tr>
<tr>
<td>- 5/8 in.</td>
<td>9</td>
<td></td>
<td>=</td>
</tr>
<tr>
<td>- 3/4 in.</td>
<td>12</td>
<td></td>
<td>=</td>
</tr>
</tbody>
</table>

Combined Fixture Value Total = 969

Customer Peak Demand From Fig. 4-2 or 4-3 x Prass. Factor = 57 gpm

Add Irrigation = Saturdays x 1.16 or 0.40

- Separate Meter = gpm

Added Fixed Load

TOTAL FIXED DEMAND = USE 1 1/2" WATER METERS PER BUILDING

*100 ft² area = 1 section

Spray systems - Use 1.16; Rotary systems - Use 0.40
Fwd: RE: follow up

dolanproperties <dolanproperties@verizon.net>
Wed 11/6/2019 7:35 PM
To: Jeffrey Howeth <jhoweth@msn.com>

Jeff, this is a close to a fixture count as I can get. Thanks, Brenda

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Robert Himmel <rhimmel@himmelhume.com>
Date: 11/6/19 5:53 PM (GMT-04:00)
To: dolanproperties <dolanproperties@verizon.net>
Subject: RE: follow up

Brenda, yes on the Typo for the proposal.

Fixture count:

Toilets: 32
Tub/shower: 32
Sinks: 48
Dishwasher: 16
Hose bib: 2
Wash Machine: 16
Utility sink: 1

Do you know which way you are leaning as far as the size of the unit?

Thanks!
Thank you Mrs. Dolan for your time spent meeting last Thursday and for the information submitted at that time. However, we still do not have sufficient data to determine if the proposed project meets the automatic sprinkler system exception requirement of the VCC 903.2.8.

I specifically need the following information:
- water supply design requirement (water flow in gpm and pressure in psi) for the automatic sprinkler system per NFPA 13R.
- water supply available from the town at the closest connection point to the property including available flow, system static pressure and residual pressure. This data should be from an independently certified water flow test performed within the last 12 months.

The automatic sprinkler system design requirements for Group R occupancies up to 4 stories high are in NFPA 13R. The NFPA 13R standard is significantly different from NFPA 13 since its principal purpose is life safety and not property protection, therefore, the requirements are less stringent. The water supply requirement is based on a maximum of up to the 4 most hydraulically demanding sprinkler heads. The standard may require you to add one hose connection (100 gpm) and the domestic demand for the building. This calculation can be performed by your Professional Engineer or a Fire Protection Design engineer.

If the existing water supply line must be extended to the proposed building connection, you may choose to have the available water supply at the building site calculated based on the extended piping. Begin with data from the water flow test indicated above and then calculate the effect of the extended piping. Pressure drop in the extended water line is affected by the pipe size and may be minimized by using larger pipe. Please calculate the water flow, static pressure and residual pressure available at the building site utilizing various pipe sizes (8", 10" or 12").

If you have any questions about what I am requesting, please do not hesitate to contact me for clarification.

Yours Truly,
Alwyn W. Davis Jr.
Essex County Building Official
Dear Mrs. Dolan,

I have reviewed the information submitted and met with Michael Lombardo, County Administrator, regarding your project. It is the intention of the County to engage an independent third party Engineer that specializes in fire sprinkler design to review this project. Prior to contracting this review, I still need the information requested in my February 04, 2020 email, specifically the automatic sprinkler design data including demand pressure psi. In reviewing the information submitted by Mr. Howeth, it has raised additional questions about the scope of the project. I feel that it is important that I have a site plan indicating the number of units for which you are seeking a building permit. This plan should also include the point of connection to the public water supply. Once this information is received, we will proceed with third party review.

Yours Truly,

Alwyn W. Davis Jr.
Essex County Building Official
Wayne Verlander

From: Alwyn Davis
Sent: Thursday, March 5, 2020 2:38 PM
To: Wayne Verlander
Subject: FW: Hobbs Hole Dr. Flow Test Report

From: Michael Lombardo <mlombardo@essex-virginia.org>
Sent: Wednesday, March 4, 2020 10:38 AM
To: Timothy Dolan <dolanproperties@verizon.net>
Cc: Matt Farmer <mfarmer@essex-virginia.org>; Robert Akers <rakers@essex-virginia.org>; John Magruder <jmagruder@essex-virginia.org>; jsydnor@tappahannock-va.gov; Alwyn Davis <awdavis@essex-virginia.org>
Subject: RE: Hobbs Hole Dr. Flow Test Report

Mr. Dolan,

At the present time Essex County has not received an application or plans that can be either approved or disapproved.

The information obtained from the independent third party engineer suggests that there is sufficient water flow and pressure to support a sprinkler system. If you wish to proceed, please submit formal plans that include a sprinkler system design consistent with NFPA 13R requirements and all the supporting data and calculations that the Building Official requires in order to review the plans.

--Michael

Michael A. Lombardo
Essex County Administrator
202 S. Church Lane
P.O. Box 1079
Tappahannock, VA 22560
(Office) 804-443-4311

From: Timothy Dolan <dolanproperties@verizon.net>
Sent: Tuesday, March 3, 2020 5:01 PM
To: Michael Lombardo <mlombardo@essex-virginia.org>
Cc: Matt Farmer <mfarmer@essex-virginia.org>; Robert Akers <rakers@essex-virginia.org>; John Magruder <jmagruder@essex-virginia.org>; jsydnor@tappahannock-va.gov; Alwyn Davis <awdavis@essex-virginia.org>
Subject: Re: Hobbs Hole Dr. Flow Test Report

Mr. Lombardo
Thank you for this information.
Shall we take this as the county’s formal decision that you will not approve our project unless we sprinkle the buildings?
Regards, Tim Dolan

Sent from my iPhone
Wayne Verlander

| From: Alwyn Davis |
| Sent: Monday, April 27, 2020 6:30 AM |
| To: Wayne Verlander |
| Subject: Fwd: Notice of Appeal-Time Sensitive |

Sent from my iPhone

Begin forwarded message:

```
From: Michael Lombardo <mlombardo@essex-virginia.org>
Date: April 21, 2020 at 10:51:27 AM EDT
To: Timothy Dolan <dolanproperties@verizon.net>
Cc: William Luter <travis.luter@dhcd.virginia.gov>, "McRoberts, Andrew R." <amcroberts@sandsanderson.com>, Matt Farmer <mfarmer@essex-virginia.org>
Subject: RE: Notice of Appeal-Time Sensitive

Mr. Dolan,

There has been no “nondecision” dating back to December 2019. Discussions prior to March 18, 2020 — the date we received your application — were informal as part of the pre-application process and meant to provide you guidance on the data and information that would be required in order for the County to a complete review of your application. I am just off the phone with the Planning Director, Matt Farmer, and confirmed that your application is incomplete and that you have not provided the information requested of you. Is it your intention to comply with our requests or are stating that no additional information will be provided? I’ve copied Mr. Farmer on this email and request that he provide you an additional letter summarizing what has been requested and remains outstanding.

--Michael

Michael A. Lombardo
Essex County Administrator
202 S. Church Lane
P.O. Box 1079
Tappahannock, VA 22560
(Office) 804-443-4311
```

From: Timothy Dolan <dolanproperties@verizon.net>
Sent: Monday, April 20, 2020 11:47 AM
To: Michael Lombardo <mlombardo@essex-virginia.org>
Cc: William Luter <travis.luter@dhcd.virginia.gov>
Subject: Re: Notice of Appeal-Time Sensitive

Mr. Lombardo

You have completely misread my Notice if Appeal. I am not appealing the Application. I am appealing the nondecision on the exception which goes back to December, 2019. I have
discussed this matter with the State Technical Review Board and they have agreed with me that this lack of a decision is appealable. Your emergency ordinance provides for meetings by electronic communication.

You do not have the discretion as County Administrator to allow or disallow the appeal. This discretion lies with the LBBCA. Please send the Notice of Appeal to them as required by law. Also, the County is in violation of the Code for not having a Secretary of the LBBCA. Please correct this violation immediately so that I may correspond with him/her as required by law.

Regards, Tim Dolan

Sent from my iPhone

On Apr 20, 2020, at 11:11 AM, Michael Lombardo <mlombardo@essex-virginia.org> wrote:

Mr. Dolan,

Attached response to your Notice of Appeal.

--Michael

Michael A. Lombardo
Essex County Administrator
202 S. Church Lane
P.O. Box 1079
Tappahannock, VA 22560
(Office) 804-443-4311

From: dolanproperties@verizon.net
Sent: Friday, April 10, 2020 12:19 PM
To: Michael Lombardo <mlombardo@essex-virginia.org>; April Rounds <arounds@essex-virginia.org>
Subject: Notice of Appeal-Time Sensitive

Mr. Lombardo:
Attached find a Notice of Appeal to the Essex County Local Board of Building Code Appeals. The Code of Virginia requires the Notice of Appeal to be sent directly to the LBBCA, but your website does not provide contact information for the members. Please distribute this Notice to each member of the Board. If you prefer that I distribute it, please provide me with the contact information for each member of the Board.

Regards, Tim Dolan

<Riverstone Development_Response to Appeal Request.pdf>
May 7, 2020

Meeting Minutes

Attendees: Matt Farmer, Alwyn Davis Jr., Wayne Verlander, Heather Hostinsky, Jeff Howeth, Brenda Dolan, Tim Dolan

Bullet Point 1 - Wayne Verlander asked for clarification of scope of Building Permit application; what is being constructed. Jeff Howeth confirmed that the permit application is for construction of 9, two story apartment buildings with a cost of $950,000 each and approximately 20,010 sq. ft. each; a more refined number for the square footage is on the architectural designs. Street parking - 32/306 on page one of application was clarified by Jeff Howeth as numbers directly off the site plan from the Town of Tappahannock, 32 spaces per building and 306 total spaces which includes additional smaller units (Villas). Wayne Verlander asked if construction of the 9 buildings would be phased and if there is a schedule for the implementation of construction of the buildings? Jeff Howeth responded and said not under the COVID 19 canvas, the intent was to build 9. Wayne stated the importance of having a construction schedule when you get into phased construction to maintain progress throughout the scheduled duration. After issuance of a permit, if there is a period of more than 6 months with no progress on a project, the permit may be revoked by the Building official. Future construction after revocation would require another permit application with associated fees. Jeff Howeth stated that he understands that and with every other state agency out there they have to submit the project as a whole, for DEQ, VDOT, DEQ with Wastewater it is a 153 unit project, once it is approved, the site plan lives for 5 years according to the state law. Heather will scan clarification notes for scope of the permit and send to Mr. and Mrs. Dolan; they will sign them and return to Heather.

Bullet Point 2 - Site plans - Wayne stated that we have received complete site plans for the first 5 buildings (pages 1-15 of the site plans) and page 16 is a development sheet with the other 4 buildings (phase 2) with no detail. Wayne indicated that we need complete site plan drawings for 9 buildings since the building permit application is for 9 buildings. Jeff Howeth responded that he has them completed and will deliver them to the Building Inspection office.

Bullet Point 3 - Architectural plans – Wayne pointed out there needs to be a cross reference between separate sets of drawings (architectural, site plans, etc). If you are going to show a building block on the site plans and say “typical inset”, it would be a good idea to cross reference it to the specific architectural drawing for that building. Wayne stated he just wants everything cross referenced so if someone picks up a set of drawings at a later date, they understand what they are looking at.

Bullet Point 4 - Wayne said that we do not need to spend a lot more time on the subject of consistency between documents; just need to make sure all information is consistent, so we are all clear on what we are saying. A quick example was the permit application indicated 20,010 sq. ft per building, the
architectural drawing indicates 18,894 sq. ft. and the site plans narrative indicates 5 buildings with 12,725 sq. ft. each.

Bullet Point 5- Approved Zoning Permit- Wyn- The Zoning Permit was issued on April 24 by Frank Sanders with some conditions, which we have received. We were waiting on the zoning permit, as we usually don’t review plans without having the approved Zoning Permit from the Town of Tappahannock and that had been mentioned in the past. Wyn is well into the review of the E&S plan. Basis of this bullet point was that you didn’t have the approved Zoning Permit, because we were refusing to provide a decision on the fire wall exception posed in January. Since we have a Zoning Permit now we will proceed with the review. Jeff Howeth asked are you saying we can get a decision since you have this since you have received this information. Wyn said yes sir, we are going to move forward with the review and provide an answer to you soon.

Bullet Point 6- Wyn- had a question on Storm Water Plan. Ms. Xing Lyn at DEQ had mentioned several storm water ponds and BMPs that would be a part of the E&S plan as far as inlet and outlet protection, anything else that would be on a storm water plan and we don’t have that, or have the location of any of the BMP’s, she mentioned 7 of them. Wyn asked if Jeff had something that he could send us. Jeff Howeth said yes, and asked if Wyn had the Hydrology report that went along with it. Wyn said, no sir. Jeff said that all the notes in that, everything that Xing Lyn asked for was in that, and Jeff is taking that up with Derek now, except for the profile through ponds, he profiled the culverts. Wyn- no, we do not have that book and what he really wanted to see was on final site plan where the basins and BMPs would be located. Jeff said in the book there is a diagram and everything is coded. Wyn asked for a copy of the book, and Jeff is going to get him a copy of it.

Wyn-Bullet Points 6 & 7 are pretty much tied together. Wyn’s goal was after the meeting today get finished up with the E&S plan and get moving to the next thing as soon as possible.

Jeff asked if Wyn has seen the VDOT & DEQ letters. Wyn has not seen the VDOT letter, but would like to have it in the file. Jeff is going to send the VDOT letter and the hydrology report to Wyn. Wyn has already received the geotechnical report. Jeff is also going to send the site plan detail for phase 2. Jeff wants to know how soon do you think we can get an answer. Wyn and Wayne said a couple weeks out, 2-3 weeks once everything is received. Wyn said if they have any questions they will give Jeff or the architect a call, it is just important to work closely and together on it, we haven’t done that since December 24, he is happy to hear that we are at least communicating on it because that’s what it takes to get a project done. Jeff agreed, and confirmed that he is going to get his stuff together and that Heather is going to get minutes and application notes from meeting over to them.
Wayne Verlander

From: Heather Hostinsky
Sent: Thursday, May 14, 2020 12:29 PM
To: jthoweth@msn.com; Timothy Dolan
Cc: Alwyn Davis; Wayne Verlander; Matt Farmer
Subject: Documents requested in May 7 meeting

Good afternoon,

Per the meeting minutes that were sent out yesterday from our meeting on May 7, 2020 Jeff said that he is going to be delivering the complete site plan drawings for 9 buildings, the hydrology report and the letter from VDOT to the Building Office. We were wondering when we can be expecting to receive those documents.

Thank you

Heather Hostinsky
Building and Zoning Office Manager
Essex County
202 South Church Lane
P.O. Box 549
Tappahannock, VA 22560
804-443-3256
Attached. It was questions sent in by Mr. Dolan.

**From:** Wayne Verlander  
**Sent:** Thursday, May 7, 2020 6:39 PM  
**To:** Matt Farmer <mfarmer@essex-virginia.org>  
**Subject:** Fwd: Meeting with Engineer Firm

Hello Matt, could you please send your original message that the engineer is responding to?

Thanks,
Wayne

Get Outlook for iOS

**From:** Alwyn Davis <awdavis@essex-virginia.org>  
**Sent:** Thursday, May 7, 2020 4:54 PM  
**To:** Wayne Verlander  
**Subject:** Fwd: Meeting with Engineer Firm

FYI.

Sent from my iPhone

Begin forwarded message:

**From:** Matt Farmer <mfarmer@essex-virginia.org>  
**Date:** May 7, 2020 at 4:23:19 PM EDT  
**To:** Heather Hostinsky <hhostinsky@essex-virginia.org>  
**Cc:** Alwyn Davis <awdavis@essex-virginia.org>, Wayne Verlander <wverlander@essex-virginia.org>  
**Subject:** RE: Meeting with Engineer Firm

I would suggest trying to call him. Below is the last email he sent, which has his name and contact information.

Mr. Farmer,

My current schedule will not allow me to continue any further with this project. Here are some basic answers to the questions you sent. I hope this helps with your project going forward.

1. The fire sprinkler design is not to a level where hydraulic calculations were run.
2. See answer to #1.
3. See answer to #1. Cross connection requirements are found at the county level. This building is considered a "lo hazard" system in terms of the fire sprinkler system. Many jurisdictions including the City of Richmond and Chesterfield county would only require a standard double gate, double check type backflow preventer. State agencies defer to each county's cross connection dept.
4. There is no code mandated safety factor in sprinkler calculations. 5 psi is a typical figure.
5. See answer to #1.
6. Domestic demand is not included in fire sprinkler calculations unless the connection to the water supply is made on the building side of the water meter. This is rare except in cases of limited sprinkler systems and/or 13D type systems, neither of which you have.
7. See answer to #1.
8. Hydrant flow test do not require the presence of a PE.
9. Fire sprinkler companies are more than qualified to perform hydrant flow tests. As stated above, PE firms are not required to conduct a hydrant flow test. Such a company would probably be my last choice to conduct such a test.
10. No comment.
11. Hydrant flow tests should be conducted at a point closest to the connection point for a new fire sprinkler system. Whether those underground mains are public or private are not a factor.
12. The reference is incorrect. Maybe 13R, 9.3.1. A county water supply is typically categorized as reliable.

Good luck with your project.

Joe Beck, P.E. - NC, SC, TN, VA
804 590 0962 Office
804 691 3640 Cell

From: Heather Hostinsky
Sent: Thursday, May 7, 2020 3:50 PM
To: Matt Farmer <mfarmer@essex-virginia.org>
Cc: Alwyn Davis <awdavis@essex-virginia.org>; Wayne Verlander <wverlander@essex-virginia.org>
Subject: Meeting with Engineer Firm

Matt,

Wyn and Wayne would like to know if there is any way that you could get a meeting set up for Thursday, May 14, 2020 at 10am with the engineer firm that did the flow testing? They would need the actual engineers on the call not the techs that actually did the field work due to having technical questions.

Thank you.

Heather Hostinsky
Building and Zoning Office Manager
Essex County
202 South Church Lane
P.O. Box 549
Tappahannock, VA 22560
804-443-3256
Because this opinion was based on a lack of pertinent information, and that we were not allowed to attend the test, we have the following questions for Mr. Beck:

1. Was the pressure/flow corrected to the point of connection?
2. What distance was used for the piping to the northeast building, which will be the first building to be constructed?
3. Our VDH calculations clearly stated that an RPZ backflow preventer would be required for these sprinklers in accordance with the Town’s Cross Connection Program monitored by VDH. Why was this omitted from the Engineer’s analysis?
4. The Town requires a large safety factor. Why was this omitted from the Engineer’s analysis?
5. It was clearly stated that the northeast building only had 32 gpm of available flow at 21 psi based upon the VDH calculations. How does the Engineer determine that there is enough pressure and flow for a sprinkler system? Where are the Engineer’s calculations regarding the potable water system hydraulics? These calculations should be provided and issued under the seal of the Engineer for review by all parties involved.
6. What values did the Engineer use for the domestic demand? Were they computed from actual fixture counts or estimated? Also, did the Engineer use the AWWA high or low flow rate curve for demand?
7. What minimum flow rate did the Engineer use for the outside hydrant flow allowance. The NFPA 13R standard requires 100 gpm hose allowance while the VDH Waterworks Regulations requires 250 gpm for a hydrant to be installed at all.
8. Why wasn’t the Professional Engineer present at the hydrant flow test?
9. Why was a sprinkler company engaged to perform the hydrant flow test instead of a full-service engineering firm with a Professional Engineer present during the test? Also, is the Professional Engineer employed by the sprinkler company? If not, did the Professional Engineer disclose his relationship in writing regarding the sprinkler company prior to Essex County contracting him to do the work?
10. Was this analysis for one building or all nine buildings supported by the zoning of the property?
11. Why was the Hydrant Flow Test Report performed for private fire service mains instead of public water mains?
12. Why was NFPA 13R, section 9.4.1 ignored? Mr. Beck references 13R but fails to comply with this section.
Wayne Verlander

From: Alwyn Davis
Sent: Tuesday, May 19, 2020 8:05 PM
To: Wayne Verlander
Subject: Fwd: Response Letter - Notice of Appeal 05/01/2020

FYI

Sent from my iPhone

Begin forwarded message:

From: "dolanproperties@verizon.net" <dolanproperties@verizon.net>
Date: May 19, 2020 at 12:12:34 PM EDT
To: April Rounds <arounds@essex-virginia.org>
Cc: Michael Lombardo <mlombardo@essex-virginia.org>, Matt Farmer <mfarmer@essex-virginia.org>, Alwyn Davis <awdavis@essex-virginia.org>
Subject: Re: Response Letter - Notice of Appeal 05/01/2020
Reply-To: "dolanproperties@verizon.net" <dolanproperties@verizon.net>

Mr. Lombardo
As I said in my correspondence of April 22, 2020, you have no authority to decide what is appealable, and what is not. That decision is solely within the purview of the LBCCA.
Further, your assertion that there must be a decision before an appeal can be taken is clearly wrong in light of Mr. Luter's correspondence of this morning. He states "The Review Board has historically held that the lack of decision by a building official constitutes a decision THAT IS APPEALABLE." (emphasis added).
Further, COVID 19 is not a basis for delaying the LBCCA meeting in light of the Attorney General's opinion that electronic meetings can be held. In fact, Essex County has convened several Board of Supervisors meetings, that School Board conducted a live meeting last night, the Building and Zoning Office has conducted a Zoom meeting with our engineer and us, and many other meeting are on the Essexs County public schedule. The meeting of the LBCCA in this matter is being delayed in retaliation against us and is discriminatory to our project.
Tim Dolan

----Original Message-----
From: April Rounds <arounds@essex-virginia.org>
To: dolanproperties@verizon.net <dolanproperties@verizon.net>
Cc: Michael Lombardo <mlombardo@essex-virginia.org>; Matt Farmer <mfarmer@essex-virginia.org>; Alwyn Davis <awdavis@essex-virginia.org>
Sent: Mon, May 18, 2020 3:07 pm
Subject: Response Letter - Notice of Appeal 05/01/2020

Mr. Dolan,

Please find attached a communication from the County Administrator.

If you have any questions, you can contact the County Administrator's Office at 804-443-4331.

Respectfully,
April L. Rounds
May 20, 2020

Wyn Davis
Building Official
202 South Church Lane
Tappahannock, VA. 22560

Dear Mr. Davis

After reviewing the site drawings for Riverstone Apartments, the Emergency Services Chief and I both agree that the apartments should be equipped with a sprinkler system. We would also like to have provided to us and added to the site drawings the fire flow calculation for the buildings to be constructed and certify that the required water flow will be available at the site to fight any future fires using the fire hydrants on site.

Sincerely,

Paul Richardson
Fire Chief
Tappahannock/Essex Volunteer Fire Dept.

James W. Brann
Chief of Emergency Services
May 29, 2020

Essex County
202 S. Church Lane
Tappahannock, VA 225660

VIA Email and Hand Delivery

Re: Essex County Local Board of Building Code Appeals Meeting

Dear Essex County,

After consulting with the Chairman of the Local Board of Building Code Appeals it is decided to hear appeals dated April 10, 2020 and May 1, 2020 at the same meeting. Since the party requesting the appeal has requested the 14 day notice prior to the meeting for the appeal dated May 1, 2020 we will be pushing the meeting from June 3, 2020 out to June 17, 2020 at 6pm. The meeting will be held at the Essex County School Board Office located at 109 Cross Street, Tappahannock, VA 22560. If anything changes and we are not able to meet in person a Zoom Meeting will be scheduled for the same date and time.

Thank you,

Heather Hostinsky

Heather Hostinsky
May 29, 2020

Mr. and Mrs. Dolan
11500 Bridgetender Drive
Henrico, VA 23233

VIA Email and Certified Mail

Re: Essex County Local Board of Building Code Appeals Meeting

Dear Mr. and Mrs. Dolan,

After consulting with the Chairman of the Local Board of Building Code Appeals it is decided to hear your appeals dated April 10, 2020 and May 1, 2020 at the same meeting. Since you have requested the 14 day notice for your appeal dated May 1, 2020 we will be pushing the meeting from June 3, 2020 out to June 17, 2020 at 6pm. The meeting will be held at the Essex County School Board Office located at 109 Cross Street, Tappahannock, VA 22560. If anything changes and we are not able to meet in person a Zoom Meeting will be scheduled for the same date and time.

Thank you,

Heather Hostinsky

Heather Hostinsky
May 29, 2020

Riverstone Development LLC
11500 Bridgetender Drive
Henrico, VA 23233

Subject: Follow up to Sprinkler Requirement Decision

Dear Mr. and Mrs. Dolan,

I am writing this follow up letter regarding my request in a letter dated May 21, 2020. Your review is currently on hold until I receive the information requested. Additionally, I still have not received the information that Mr. Howeth stated that he would deliver to me following our May 7, 2020 meeting. Furthermore, it is imperative that I have this information prior to making a decision on your application.

Sincerely,

Alwyn Davis
Essex County Building Official
Additional Documents
Submitted By
Essex County
(Page left blank intentionally)
VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE Timothy Dolan
Appeal No. 20-01

WRITTEN ARGUMENT OF THE COUNTY OF ESSEX, VIRGINIA

The County of Essex, Virginia, (the "County"), by counsel, submits the following to the State Building Code Technical Review Board (the "Review Board") as its written argument in response to the appeal filed by the appellant, Timothy Dolan ("Mr. Dolan").

1. Factual Background. The County asks that the following additions and corrections be made to the factual background provided by the Review Board Staff in their Suggested Summary of Case History and Pertinent Facts. Paragraphs 1 through 4 concern the procedural posture of this matter and require additional clarifications. Mr. Dolan has filed three appeals to the County's Local Board of Building Code Appeals ("LBBCA") that are relevant to this matter, dated April 10, 2020, May 1, 2020, and June 15, 2020, respectively. Each is addressed in turn below:

   a. April 10, 2020 LBBCA Appeal. Paragraph 1 correctly states that Mr. Dolan's first LBBCA appeal dated April 10, 2020, which is the appeal presently before the Review Board, alleges inaction on the part of the County's Building Department on the building permit application filed by Mr. Dolan a month prior on March 17, 2020. (Draft Record p. 139-142.) By letter dated April 20, 2020, the Essex County Administrator responded to this application for appeal, stating that it would be forwarded to the LBBCA but advising that "due to the ongoing state of emergency[from the COVID-19 pandemic] declared by the Commonwealth and the County of Essex ("County"), and the County's continuity of
government ordinance, the LBBCA is not required to schedule a hearing within thirty days of your request.” (Draft Record p. 10.) The County further advised Mr. Dolan of its position that an application to the LBBCA was premature because no decision had yet been made on the March 17, 2020 building permit application, which was also deemed incomplete by the County. (Draft Record p. 10.)

As stated in Paragraph 2 of the Staff Document, Mr. Dolan then sought to appeal the alleged inaction that was raised in his April 10, 2020 LBBCA application to the Review Board by application received May 12, 2020. Paragraph 3 of the Staff Document correctly summarizes the exchanges between the parties regarding the scheduling of an LBBCA hearing on the April 10, 2020 application, which was ultimately heard on June 17, 2020. At that hearing, the LBBCA dismissed Mr. Dolan's application, finding that there was no decision to appeal. (Draft Record p. 80.) The LBBCA issued its Resolution on June 30, 2020 (Draft Record p. 4) which was appealed to the Review Board on July 13, 2020, as stated in Paragraph 4 of the Staff Document.

b. May 1, 2020. In the interim between the filing of the April 10, 2020 LBBCA Appeal and Mr. Dolan's application to the Review Board dated May 11, 2020 based upon that appeal, Mr. Dolan filed a second appeal with the LBBCA dated May 1, 2020. This application did not appeal a particular decision of the Building Official, but rather alleged violations of the Construction Code. A copy of this Notice of Appeal was included with the County’s May 27, 2020 letter to the Review Board (Draft Record p. 72), but was not included in the Draft Record because the appeal was subsequently dropped by Mr. Dolan at the June 17, 2020 LBBCA hearing (Draft. Record p. 79).
c. **June 15, 2020 LBBCA Appeal.** The third LBBCA appeal relevant to the matter before the Review Board is the application for appeal filed with the LBBCA by Mr. Dolan on June 15, 2020, a copy of which is attached hereto as **Exhibit A** for inclusion in the Record. As is detailed in the County's suggested edits (discussed below) to Staff's timeline of events in Paragraph 5 of the Staff Document, on May 7, 2020, the parties to this appeal met to discuss Mr. Dolan's March 17, 2020 building permit application and identify additional information required by the Building Department for its review and examination under Section 109.4 of the Virginia Construction Code ("VCC"). Subsequent to this May 7th meeting, the County's Building Department sent follow-up correspondence to Mr. Dolan dated May 14, 2020 (Draft Record p. 120), May 22, 2020 (Draft Record p. 43), May 29, 2020 (Draft Record p. 136), and June 5, 2020 (Draft Record p. 45-46) identifying and requesting the required information. In his last letter dated June 5, 2020, the Building Official advised Mr. Dolan that if the information was not received by June 12, 2020, he would have no choice but to deny the March 17, 2020 building permit application. (Draft Record p. 46.) The information was not received by this date, and in fact Mr. Dolan's engineer sent a letter dated June 13, 2020 stating that his client had "intentionally failed to provide the requested information by the deadline." (Draft Record p. 47.) Accordingly, on June 15, 2020, the Building Official sent a letter denying Mr. Dolan's March 17, 2020 building permit application for lack of information and incompleteness. *(See Exhibit A.)* Mr. Dolan promptly appealed the denial of his building permit application to the LBBCA, and a hearing on the denial was held on July 13, 2020. At this hearing, the LBBCA voted to affirm the denial of Mr. Dolan's building permit application, and issued its Resolution of this ruling on July 15, 2020, a copy of which is attached hereto as **Exhibit B** for inclusion in the Record. Importantly, the deadline to appeal this decision pursuant to Section
119.8 of the VCC was August 18, 2020, and Mr. Dolan failed to appeal as permitted by law.

The County received no notice that Mr. Dolan filed an appeal or attempted to file an appeal.

Accordingly, pursuant to Section 119.8, the failure to appeal the LBBCA's July 15, 2020 decision constitutes an acceptance of the Building Officials denial of the March 17, 2020 building permit application.

d. **Timeline.** Finally, with respect to the timeline provided in Paragraph 5 of the Staff Document, the County has the following proposed revisions, which are shown in *strikethrough*, and suggested additions, which are shown in **bold**:

December 11, 2019 - Essex Building Official and Robert Himmel agreed that VCC Section 903.2.8 applied to the proposed project “if we can prove the water pressure or volume or both are not available” (Page 12 of Draft Record)

December 20, 2019 - First submission by architect to Essex Building Official of 30% design drawings for 1 apartment building (Page 13-14 of Draft Record)

December 21, 2019 - Essex Building Official indicates that water pressure and volume is available to sprinkle the building (Page 13-14 of Draft Record)

January 3, 2020 - Jeffrey Howeth, engineer for Mr. Dolan, communicates to the Town of Tappahannock a sprinkler demand of 800 gpm flow with 70-80 psi pressure (based on an ISO Fire Flow calculator) and a 2 hour fire flow requirement (Page 13-14 of Draft Record)

January 3, 2020 - Town of Tappahannock acknowledges that the municipal system cannot meet the sprinkler pressure or volume requirements for the proposed project; therefore, would require a tank and booster pump (Page 14 of the Draft Record)

January 9, 2020 - First informal request for the Building Official to apply the exception of VCC Section 903.2.8 eliminating the requirement to install an automatic sprinkler system (Page 15 of the Draft Record). **No application for building permit was yet submitted.**

January 13, 2020 - Essex County Building Official opined that he thought the buildings would be better served by an automatic sprinkler system indicates his belief that the volume and pressure may be available or made available if properly designed and recommended a study by an engineer who practices the design of these systems on a regular basis to determine if a sprinkler system would work for the proposed project (Page 16 of the Draft Record)
January 13, 2020 - The applicant, Timothy Dolan, does not believe further studies are required and issues a second informal request for the Building Official to apply the exception of VCC Section 903.2.8 eliminating the requirement to install an automatic sprinkler system (Page 65 of the Draft Record). Again, no application for building permit was yet submitted.

January 21, 2020 - Essex Building Official communicates to Timothy Dolan and requests that a design engineer provide water flow and pressure requirements for a sprinkler system compliant with NFPA 13R (New Page of the Draft Record, attached hereto as Exhibit D)

January 28, 2020 - Jeffrey Howeth, engineer for Mr. Dolan, indicates a sprinkler demand of 1000 gpm based on his application of NFPA 13R and a maximum allowance of 500 gpm at the site after subtracting the required domestic flow for each building (Page 89 of the Draft Record).

February 4, 2020 - Essex Building Official again requests flow and pressure requirements for a NFPA 13R compliant system and water supply flow and pressure available at property connection point (Page 95 of the Draft Record)

February 6, 9, 2020 - J. L. Howeth P.C., engineer for the Dolans, provided calculations and design that the proposed project met the exception requirement of VCC Section 903.2.8 (Page 18 27, of the Draft Record)

February 11, 2020 - Essex Building Official again requests automatic sprinkler system design data including demand pressure psi. He also requests a site plan with the total number of units proposed to be built. (Page 102 of the Draft Record)

February 13, 2020 - Town of Tappahannock confirmed that the municipal system could not guarantee water for the sprinkler system for the proposed project “with the information that the Town of Tappahannock has been provided” (Page 28 of the Draft Record)

February 27, 2020 - Essex County provided evidence that the municipal system was adequate and that the necessary pressure and flow existed via Hydrant Flow Test performed by eTec Fire Protection (Pages 29-31 and 104-105 of the Draft Record)

March 4, 2020 - Essex County Administrator instructs Dolan to submit plans that include a sprinkler system design consistent with NFPA 13R (Page 103 of the Draft Record)

March 5, 2020 - Dolan challenges the findings of the Hydrant Flow Test performed by eTec Fire Protection (Page 67-69 of the Draft Record)

March 8, 2020 - Dolan submitted a building permit application (Page 139-142 of the Draft Record)
March 26, 2020 - Essex Building Official requests clarification on the scope of the building permit application and also requests engineered drawings for the entire scope (Page 36 of the Draft Record).

March 29, 2020 - Jeffrey Howeth attempts to clarify that the scope of the permit includes 9 apartment buildings and promises to provide a set of Final Site Plans for review (Page 37 of the Draft Record).

April 10, 2020 - Dolan filed an application for appeal to the Essex County Local Board of Building Code Appeals challenging the Building Official's failure to act on the March 17, 2020 building permit application.

April 20, 2020 - Essex County Administrator responds to April 10, 2020 application for appeal to the LBBCA explaining he will forward the application for appeal to the LBBCA but some delay due to COVID-19 would be involved (Page 10 of the Draft Record).

April 21, 2020 - Essex County Administrator indicates to Timothy Dolan that the building permit application is incomplete and requires additional information (Page 115 of the Draft Record).

April 22, 2020 - Essex Planning Director again requests information required for the County to review the building application (Page 39 of the Draft Record).

May 7, 2020 - Essex County personnel hold a meeting with the Dolans and Jeffrey Howeth via conference call to clarify all information required for the building permit. Mr. Dolan's Engineer, Jeffrey Howeth, promised to deliver complete site plans for the proposed 9 buildings, the hydrology report and VDOT letter in a few days. (Meeting Minutes Pages 118-119 of the Draft Record).

May 12, 2020 - Dolan filed an appeal application to the State Building Code Technical Review Board, even though the LBBCA had not yet considered his underlying April 10, 2020 appeal (Page 5 of the Draft Record).

May 14, 2020 - Follow up request to Mr. Dolan by Building Official for information promised during May 7, 2020 meeting (Page 120 of the Draft Record).

May 22, 2020 - Follow up request by Building Official to Dolan for information promised during May 7, 2020 meeting (Page 43-44 of the Draft Record).

May 29, 2020 - Follow up request by Building Official to Dolan for information promised during May 7, 2020 meeting (Page 136 of the Draft Record).

June 5, 2020 - Follow up request by Building Official to Dolan for information promised during May 7, 2020 meeting (Page 45-46 of the Draft Record).

June 12, 2020 - Permit application denied for lack of information required (Page 76 of the Draft Record).
June 13, 2020 - Mr. Dolan's engineer, Jeffrey Howeth, responds to the Essex Building Official admitting that he and his clients have “intentionally failed to provide the requested information by the deadline” (Page 47 of the Draft Record)

June 15, 2020 - Dolan filed a second application for appeal to the Essex County Local Board of Building Code Appeals; this time with the needed written decision of the Essex County Building Official Local Board of Building Code Appeals. (New Page of the Draft Record, attached hereto as Exhibit A)

June 17, 2020 - Essex County Local Board of Building Code Appeals hearing on April 10, 2020 application for appeal based on alleged inaction of the Building Official (Page 75 of the Draft Record)

June 18, 2020 - Essex Building Official again requests clarification of hydraulic calculations. (New Page of the Draft Record, attached hereto as Exhibit D)

June 30, 2020 - Written decision of the Essex County Local Board of Building Code Appeals on the April 10, 2020 application for appeal based on alleged inaction was signed and dated (Page 4 of the Draft Record)

July 13, 2020 - Essex County Local Board of Building Code Appeals hearing on June 15, 2020 application for appeal based on denial of building permit application

July 15, 2020 - Written decision of the Essex County Local Board of Building Code Appeals on June 15, 2020 application for appeal based on denial was signed and dated (New Page of the Draft Record, attached hereto as Exhibit B)

August 18, 2020 - Dolan fails to appeal the July 15, 2020 decision of the LBBCA based on the denial of his permit application in a timely manner as permitted by law

2. The LBBCA decision should be affirmed. With respect to the first Suggested Issue for Resolution by the Review Board, the County submits that the decision of the LBBCA should be affirmed. Mr. Dolan's April 10, 2020 LBBCA application was properly dismissed because (a) there was no decision of the Building Official to appeal and (b) there was no inaction on the part of the County's Building Department.
a. **No Decision.** The ability to file an application for appeal with the LBBCA is established pursuant to Section 119.5 of the VCC, which states in relevant part that "[a]ny person aggrieved by the local building department’s application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA." Thus, in order to be aggrieved, the applicant must be harmed by an affirmative action or decision of the local building department – either through its application of the USBC or its refusal to grant a modification of the USBC. The Review Board has previously addressed the issue of what is required to be aggrieved under the VCC and held that there must be "a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon a party different from that suffered by the public generally." Decision of Review Board, Appeal No. 17-6, at pg. 3. Furthermore, the jurisdiction of the LBBCA itself is limited by the VCC, which states in Section 119.7 that the LBBCA only has the authority to "uphold, reverse, or modify the decision of the official by a concurring vote of a majority of those present." (emphasis added).

In this case, there was no such denial or particularized harm by which Mr. Dolan could be aggrieved. Therefore, there was no decision that the LBBCA could "uphold, reverse, or modify" in conducting its prescribed duties under Section 119.7 of the VCC. In fact, when the subject appeal was filed with the LBBCA, the March 17, 2020 building permit application had only been under review for less than a month (although the County had been in informal pre-application discussions with Mr. Dolan regarding the proposed application since the beginning of the year). The County’s Building Department was in the process of examining the submitted application and requesting additional information required to conduct that examination, as required by Section 109.4 of the VCC, when the subject appeal was filed a mere 24 days after submission of the permit application on April 10, 2020. Accordingly, as of the date the LBBCA appeal was
filed, the Building Official had not yet made a decision on the building permit application or the attendant question of whether the sprinkler exception of Section 903.2.8 of the VCC applies, and therefore there was no decision or denial to appeal. Accordingly, Mr. Dolan is not a person aggrieved under Section 119.5 of the VCC and has no standing to bring this appeal.

b. No Inaction. Moreover, even if the Review Board includes the pre-application meetings and discussions between the parties regarding the applicability of Section 903.2.8 of the VCC leading up to Mr. Dolan's April 10, 2020 appeal in its analysis, the record of this case recited above clearly demonstrates that there was no inaction on the part of the County's Building Department. Quite to the contrary, the robust record shows consistent, timely, and extensive action by the Building Department to respond to Mr. Dolan's questions and examine his March 17, 2020 building permit application. Importantly, the Building Department made numerous requests for information necessary to examine the building permit application and determine whether the sprinkle exception applies to the project, but those requests were either ignored or not fully and accurately responded to by Mr. Dolan. The County's Building Department has prepared a presentation addressing the allegations of inaction which details its extensive work and record of responsiveness in this case. This presentation is attached hereto as **Exhibit C**, and will be discussed in detail by Building Department Staff during the County's presentation of its case before the Review Board. The County has also attached three additional documents referenced in that presentation as **Exhibit D**, which it requests also be added to the Record of this case. As the supplemented timeline included above shows, and as the Building Department's presentation will further detail, there has been no "inaction" by the Building Department in this matter. Far from it. Because that alleged inaction is the factual predicate for the April 10, 2020 appeal, it was properly dismissed by the LBBCA.
3. **This scope of this appeal is limited to whether or not there was inaction creating a decision by implication.** The Staff Document states in its **Suggested Issue for Resolution by the Review Board** that if the Review Board overturns the LBBCA's dismissal of the April 10, 2020 application for appeal based on alleged inaction, there are two other issues for resolution:

- # 2. Whether adequate water, pressure, and/or flow is available at the proposed site; and
- # 3. Whether the exception of VCC Section 903.2.8 (Group R) applies to the project proposed by Timothy Dolan.

The County strongly disagrees that these issues are properly before this Board. Neither of these issues was before the LBBCA in its consideration of the "inaction" appeal below, which is now before this Board. Moreover, neither issue is before the Review Board because a decision on the March 17, 2020 building permit application, to which both issues directly relate, was made in a separate case before the LBBCA which was not appealed to this Review Board.

As is recounted above, the Building Official issued a decision on June 12, 2020 denying the building permit application because it did not contain the required information pursuant to Sections 109.4 and 110.1 of the VCC. Importantly, the assessment of whether the exception in Section 903.2.8 of the VCC is applicable to this project does not occur in the abstract, but rather occurs as part of the Building Official's analysis of the construction documents submitted with the building permit application for the project under Section 109.4 of the VCC. In this case, the Building Official concluded that he lacked the necessary information to determine whether the exception of Section 903.2.8 of the VCC was applicable in this case, and therefore on June 12, 2020 denied the building permit application seeking this exception. That decision was appealed by Mr. Dolan to the LBBCA which conducted a hearing on the matter on July 13, 2020. The LBBCA then issued its Resolution affirming the denial on July 15, 2020.
Pursuant to Section 119.8 of the VCC, in order to further contest the denial of his building permit application, Mr. Dolan was required to appeal the LBBCA's July 15, 2020 decision to the Review Board within 21 days of his receipt of the Resolution. Pursuant to the County's records, the Resolution was received by Mr. Dolan on July 27, 2020. Therefore, the deadline to appeal this decision passed on August 18, 2020. Pursuant to Section 119.8, absent an appeal Mr. Dolan is deemed to have accepted the Building Official's denial of his building permit application pursuant to of the VCC for lack of adequate information – specifically on the issues of the amount of water pressure and flow at the proposed site and whether the sprinkler exception of Section 903.2.8 applies to the project. Therefore, these issues have already been decided and are not before the Review Board in this matter. VCC §119.8; see also Occoquan Land Development Corp. v. Cooper, 239 Va. 363 (1990) (no jurisdiction if an appeal is not timely filed); Miller v. State Bldg. Code Tech. Review Bd., 2003 Va. App. LEXIS 412 (Va. Ct. of Appeals 2003) (dismissal proper where applicant had not appealed the decision of the building official at issue) [copies of both opinions are attached hereto as Exhibit E for reference and proposed entry into the Record.

4. The inapplicability of the exception of VCC Section 903.2.8. If the Review Board nonetheless elects to take up the second and third Suggested Issue for Resolution by the Review Board, the presentation of the County's representatives also contains an analysis of those issues, based on what information the Building Department has received to date. In the presentation, the Building Department details its opinions and conclusions that there is adequate water, pressure, and flow to the site and therefore the exception of Section 903.2.8 of the VCC does not apply to the project detailed in the (now denied) building permit application filed by Mr. Dolan on March 17, 2020. The presentation also highlights that at all stages of this matter, the County's focus has
been on code compliance and safety. The Building Official's responsibility is to protect the health, safety, and welfare of the citizens of Essex County, and nowhere is that obligation more readily apparent than when considering whether to approve an exception to a required fire prevention system. The Building Official cannot approve a building permit application that does not provide for the installation of an automatic sprinkler system as required by Section 903.2.8 unless it is clearly established that the project qualifies for an exception due to an inadequate supply of water pressure or volume, or both. To this end, the County repeatedly requested the information necessary to make this determination, including by its letters dated May 14, 2020 (Draft Record p. 120), May 22, 2020 (Draft Record p. 43), May 29, 2020 (Draft Record p. 136), and June 5, 2020 (Draft Record p. 45-46). However, this information was never received, and the Building Official therefore had no recourse but to deny the March 17, 2020 building application filed by Mr. Dolan. That denial was never appealed, is not before this Board, has been accepted by the applicant per VCC § 119.8, and is now final.

WHEREFORE, the County of Essex, Virginia, by counsel, respectfully requests that the Review Board (1) affirm the decision of the LBBCA dismissing Mr. Dolan's April 10, 2020 application for appeal based on alleged inaction of the Building Official; and (2) hold that the issue whether the exception stated in Section 903.2.8 of the VCC applies to this matter is not properly before the Review Board. If the Review Board does take up the applicability of Section 903.2.8, the County respectfully objects but requests that the Board find that the exception is inapplicable in this case.
Respectfully submitted,

COUNTY OF ESSEX, VIRGINIA

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Christopher M. Mackenzie, Esq. (VSB No. 84141)
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Email: amcroberts@sandsanderson.com
Email: cmackenzie@sandsanderson.com
Counsel for the County of Essex, Virginia

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2020, a copy of the foregoing was sent by electronic mail to:

W. Travis Luter Sr., C.B.C.O.
Department of Housing & Community Development
Division of Building & Fire Regulation, State Building Codes Office
600 East Main Street, Suite 300
Richmond, Virginia 23219
Telephone: (804) 371-7163
Facsimile: (804) 371-7092
Email: travis.luter@dhcd.virginia.gov
Secretary to the State Building Code Technical Review Board
Code and Regulation Specialist

William D. Bayliss, Esquire
WILLIAMS MULLEN
200 South 10th Street, Suite 1600
Richmond, Virginia 23219
Telephone: (804) 420-6459
Facsimile: (804) 420-6507
Email: bbayliss@williamsmullen.com
Counsel for Appellant, Timothy Dolan

Counsel for the County of Essex, Virginia
Exhibit A

June 15, 2020 Application for appeal filed with the LBBCA by Mr. Dolan
June 15, 2020

TO ALL MEMBERS OF THE ESSEX COUNTY
LOCAL BOARD OF BUILDING CODE APPEALS
VIA EMAIL AND FIRST-CLASS MAIL
C/O Ms. Heather Hostinsky, Secretary

NOTICE OF APPEAL

Please accept this letter as a Notice of Appeal pursuant to Virginia Construction Code section 119.5 and distribute it to all Members of the LBBCA. Please let us know when the hearing is scheduled. The basis of the appeal is explained below.

NAME AND ADDRESS OF OWNER/APPLICANT:
Riverstone Development LLC
11500 Bridgetender Drive
Henrico, VA 23233

LOCATION OF PROPERTY:
15.3 acres located on Hobbs Hole Drive
Tappahannock, VA 22560

NAME AND ADDRESS OF PERSON APPEALING/AGGRIEVED PERSONS:
Timothy J. and Brenda S. Dolan, Owners and Developers
11500 Bridgetender Drive
Henrico, VA 23233

BASIS OF APPEAL:
The denial of our application dated June 15, 2020, including the failure of the Building Official to comply with Virginia Construction Code section 109.4 (copy attached)

Thank you for your consideration.
Very Truly Yours,

Timothy J. Dolan

Brenda S. Dolan

Cc: Board of Supervisors
Mr. and Mrs. Dolan  
11500 Bridgetender Drive  
Henrico, VA 23233  

Via Email and Certified Mail  

Dear Mr. Dolan,  

This will confirm the receipt of your letter dated June 14, 2020. You have failed to deliver the site plan that was promised and to respond to the questions presented in my earlier correspondence dated May 14, 22, 29, & June 5th. Due to the lack of information and incompleteness, your application is hereby denied. If you choose to reapply, I would recommend a complete application with answers to my previous questions including a final site plan from Mr. Howeth.  

Yours Truly,  

Alwyn W. Davis Jr., CBO Essex County
Exhibit B

July 15, 2020 Resolution of LBCCA affirming denial of March 17, 2020 building permit application
Resolution
of the Essex County Local Board of Building Code Appeals

WHEREAS, the Essex County Local Board of Building Code Appeals ("LBBCA") is duly appointed to resolve disputes arising out of enforcement of the Virginia Uniform Statewide Building Code; and

WHEREAS, an appeal has been filed and brought to the attention of the LBBCA; and
WHEREAS, a hearing has been held to consider the aforementioned appeal; and
WHEREAS, the LBBCA has fully deliberated this matter; now, therefore, be it
RESOLVED, That in the matter of

Appeal No.: 2020-02
Applicant: Timothy J. Dolan

IN RE: Appeal for the denial of Riverstone Development LLC’s application dated June 15, 2020, including the failure of the Building Official to comply with Virginia Construction Code 109.4.

The matter brought up on appeal is hereby dismissed, for the reasons stated on the record and as further set out below:

- The LBBCA made the motion to accept the county’s denial of the building permit, due to lack of requested information.

Date: 2/5/20
Signature: [signature]

Note: Any person who was a party to the appeal may appeal the LBBCA’s decision to the State Building Code Technical 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, VA 23219, (804) 371-7150, http://www.dhcd.virginia.gov/index.php/va-building-codes/building-and-fire-codes/appeals.html.
Exhibit C

County Building Department Presentation
Riverstone Development request for Automatic Sprinkler Exception under Section 903.2.8 of the Virginia Construction Code.
Topics to Address

1. Riverstone Development assertion of Inaction and No Decision by the County of Essex Building Official
   • Information Requested by Essex County
   • Responses from Riverstone Development

2. Interim Decision on the Automatic Sprinkler Exception
   • Site hydraulic calculations
   • 3rd Party Professional Engineers findings
   • Conclusion
Facts to Consider for Sprinkler Requirement in Apartments

- Riverstone Development Apartments are classified as R2 occupancy per VCC 2015 Section 310.4
- Section 903.2.8 of the 2015 VCC addresses Automatic Sprinkler System requirements for Group R

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area, except for Group R-2 occupancies listed in the exceptions to this section when the necessary water pressure or volume, or both, for the system is not available:

Exceptions:

1. Group R-2 occupancies that do not exceed two stories, including basements that are not considered as a story above grade, and with a maximum of 16 dwelling units per fire area. Each dwelling unit shall have at least one door opening to an exterior exit access that leads directly to the exits required to serve that dwelling unit.

2. Group R-2 occupancies where all dwelling units are not more than two stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit and a two-hour fire barrier is provided between each pair of dwelling units. Each bedroom of a dormitory or boarding house shall be considered a dwelling unit under this exception.
A Decision on a Sprinkler Exception under Section 903.2.8 requires:

- The water flow (gpm) and pressure (psi) required to operate a sprinkler system that has been designed per NFPA13R.
- The water flow (gpm) and pressure (psi) available at the project site.

This should be a simple fact-based decision, not an opinion.
Background of Riverstone Development Sprinkler Exception Request

From: Robert Himmel <rhimmel@himmelhume.com>
Sent: Friday, December 20, 2019 3:20 PM
To: Alwyn Davis <awdavis@essex-virginia.org>
Cc: dolanproperties <dolanproperties@verizon.net>; Jeff Hume <jhume@himmelhume.com>
Subject: RE: Dolan Properties 1352 Hobbs Hole, Tappahannock, VA

Good afternoon Wynn,

Attached please find a 30% Design Development set for your review. Please let me know if you have any questions, comments or there is anything that you would like us to pay particular attention too. Thanks and have a Merry Christmas!

Sincerely,

Bob Himmel
When presented with a demand of 800 GPM @ 70-80 psi, the Town of Tappahannock responded that they could not guarantee water for the sprinkler system. The Building Department concluded that this flow & pressure information was not accurate.
The Insurance Services Organization (ISO) Fire Flow Calculator submitted by the Engineer of Record is not a tool for determining Automatic Sprinkler System demand.

NFPA13R is the Standard for Sprinkler Systems in Low Rise Residential Occupancies.

The ISO fire flow calculator indicates how much less water would be needed to extinguish a fire if a sprinkler system was installed to provide an early response.

This sprinkler credit is irrelevant to the amount of water required to operate a sprinkler.
From: Alwyn Davis  
Sent: Monday, January 13, 2020 11:31 AM  
To: Robert Himmel  
Cc: jloheweth@msn.com; Wayne Verlander  
Subject: RE: Dolan Properties 1352 Hobbs Hole, Tappahannock, VA

Good Morning Bob,
Please allow this email to serve as a follow up to our conversation last week regarding the Dolan properties apartment building in Tappahannock. Section 903.2.8 of the Virginia Construction Code clearly states that a sprinkler system is required in all R-2 occupancies except when the necessary water pressure or volume, or both, for the system is not available. I received information from J. L. Howeth P.C. from an (ISO) fire flow calculator that indicated that the flow required would exceed the volume/pressure that the Town of Tappahannock’s water system would provide. I understand from Mr. Sydnor that the water pressure available is 52 PSI. The exceptions in the code would alleviate the developer from this requirement but I do feel that the apartments would be better served if they were served by a sprinkler system. I am recommending that a study be performed by an engineer who practices the design of these systems on a regular basis to determine if a sprinkler system would work at the proposed location. I believe that the volume and or pressure may be available or made available if properly designed. Please understand that I’m not discounting the information that Mr. Howeth has submitted, but I will need more information prior to making a decision. If the pressure/volume is not available, I will entertain using exception 1 in the aforementioned section of the VCC. Please feel free to contact me if you have questions or if I can be of further assistance.

Yours Truly,

Alwyn W. “Wyn” Davis Jr.  
Certified Building Official, Essex County, Virginia
Riverstone Development response:

• Mr. Howeth has calculated necessary pressure and flow with ISO fire flow calculator.
• Town of Tappahannock has indicated they have insufficient pressure and flow to meet demand.
• Believe that a decision can be made without further study.
January 21, 2020 Letter from Mr. Davis submitted by County as supplement to the Record

Building Official requests water flow and pressure requirements for a system that is NFPA 13R compliant.

From: Alwyn Davis  
Sent: Tuesday, January 21, 2020 8:03 AM  
To: dolanproperties@verizon.net  
Subject: RE: Dolan Properties-Hobbs Hole

Dear Mr. Dolan,

I received your email dated January 13, 2020 and offer the following comments.

I was contacted by your architect, Bob Himmel in late December. Mr. Himmel was preparing a preliminary plan for a proposed apartment complex. I simply explained to Mr. Himmel the requirements set forth in section 903.2.8 of the Virginia Construction Code. This section requires that all R-2 occupancies require sprinkler systems unless the pressure and or volume or both are not available. On January 06, 2020, I received an email from Mr. James Sydnor (Tappahannock Town Manager) including data provided by Mr. J.L. Howeth P.C. suggesting that the Town of Tappahannock’s water system could not produce the required pressure and or volume to meet what he had calculated using an (ISO) fire flow calculator.

The Insurance Services Organization (ISO) fire flow calculator is one of the methodologies for calculating required water flow rates for sprinklered and non-sprinklered buildings. It is not a tool for determining the required design pressure and flow requirements for a fire sprinkler system. In order to determine the flow required for a fire sprinkler system in an R-2 occupancy, a fire protection design engineer needs to complete the hydraulic calculations for a system that complies with NFPA13R (specifically Chapter 7). Once the required flow and pressure are calculated, we can review the municipal water supply to determine if that water pressure and flow are available.

Please have your design engineer provide the water flow and pressure requirements along with the supporting hydraulic calculations for a system that is compliant with NFPA13R for our review.

Yours Truly,

Alwyn W. Davis Jr.
Significant misapplication of NFPA13R – resulting in a calculated sprinkler demand in excess of 15 times the actual required sprinkler demand.
Thank you Mrs. Dolan for your time spent meeting last Thursday and for the information submitted at that time. However, we still do not have sufficient data to determine if the proposed project meets the automatic sprinkler system exception requirement of the VCC 903.2.8.

I specifically need the following information:
- water supply design requirement (water flow in gpm and pressure in psi) for the automatic sprinkler system per NFPA 13R.
- water supply available from the town at the closest connection point to the property including available flow, system static pressure and residual pressure. This data should be from an Independently certified water flow test performed within the last 12 months.

The automatic sprinkler system design requirements for Group R occupancies up to 4 stories high are in NFPA 13R. The NFPA 13R standard is significantly different from NFPA 13 since it’s principal purpose is life safety and not property protection, therefore, the requirements are less stringent. The water supply requirement is based on a maximum of up to the 4 most hydraulically demanding sprinkler heads. The standard may require you to add one hose connection (100 gpm) and the domestic demand for the building. This calculation can be performed by your Professional Engineer or a Fire Protection Design engineer.

Another request from the Building Official for the same information.
Another set of hydraulic calculations submitted
Dear Mrs. Dolan,

I have reviewed the information submitted and met with Michael Lombardo, County Administrator, regarding your project. It is the intention of the County to engage an independent third party Engineer that specializes in fire sprinkler design to review this project. Prior to contracting this review, I still need the information requested in my February 04, 2020 email, specifically the automatic sprinkler design data including demand pressure psi. In reviewing the information submitted by Mr. Heweth, it has raised additional questions about the scope of the project. I feel that it is important that I have a site plan indicating the number of units for which you are seeking a building permit. This plan should also include the point of connection to the public water supply. Once this information is received, we will proceed with third party review.

Yours Truly,

Alwyn W. Davis Jr.
Essex County Building Official
Essex County has made numerous requests for flow and pressure information, clarification to hydraulic calculations and for site details.

The applicant has not provided documents as promised and has not provided direct answers to specific engineering questions.
May 22, 2020
Mr. and Mrs. Dolan
Riverstone Development LLC
11500 Bridgetender Drive
Henrico, VA 23233
Subject: Update on Application / Sprinkler Requirement

In addition, based on our understanding of the project based on what you have provided so far, we are reviewing your request to eliminate the fire protection automatic sprinkler system requirement under exception 903.2.8 of the Virginia Construction Code (VCC). After reviewing your engineer’s correspondence of 2/6/20, and your May submissions mentioned above, we have some questions that need to be clarified:

1 - The hydrant flow test report indicates a residual pressure of 28 psi at Hydrant A and a residual pressure of 20 psi at Hydrant B with a flow of 875 gpm. Since Hydrant B is upstream from Hydrant A, it appears the pressure at Hydrant B would be the higher reading. Maybe the designation for the hydrants was transposed; please confirm.

2 - The calculations indicate a pressure drop from the existing Hydrant B to the intersection of White Oak Drive and Hobbs Hole Drive of 5.6 psi (28 psi - 22.4 psi). Since the intersection is upstream from Hydrant B, it appears that the pressure would actually be higher. Should the 5.6 psi have been added to the Hydrant B value?
At present, the Building Department still has not received accurate responses to the information requested in January:

- How much water flow and pressure are required by a properly designed sprinkler system?
- How much water flow and pressure are available at the project site?

### Summary of Engineering Responses

<table>
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<th>Available Water Flow (GPM)</th>
<th>Available Water Pressure (PSI)</th>
<th>Sprinkler Flow (GPM) Requirement</th>
<th>Sprinkler Pressure (PSI) Requirement</th>
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</table>
The Building Department’s focus is on code compliance and safety

Page 13 of the Record

“Brenda, I followed up with Wynn per our conversation and he said that the county does have the water pressure and volume to sprinkler the building. I know this is bad news for the budget. Is it a deal killer?”

Page 66 of the Record

The focus for Riverstone Development has been construction cost avoidance

January 13, 2020

Alwyn W. Davis, Jr.
Certified Building Official
Essex County, Virginia

VIA EMAIL

Re: Dolan Properties- Hobbs Hole

Dear Mr. Davis:

“We believe there is more than enough information for you to make the decision on the sprinkler, and any such additional study and redesign would be cost prohibitive. Our estimates range in excess of $200,000.”
Essex County Building Official has been Requesting this information since January, 2020

- Sprinkler demand flow (gpm) and pressure (psi) for NFPA13R compliant system
- Available water supply flow (gpm) and pressure (psi) at the project site

After numerous requests, ....

1/21/20, 2/4/20, 2/11/20, 5/14/20, 5/22/20, 5/29/20, 6/5/20, 6/18/20

....we still have not received a reliable response to the requests

There has been No Lack of Activity by the Building Official on this matter
Should the Technical Review Board choose to proceed with a decision on the sprinkler exception request today ..........

Essex County would like to present the following information for consideration.
Applicability of Exception to VCC 903.2.8

Riverstone Development has built their case on “Two Definitive Reasons”

1 – Town of Tappahannock Letter

2 – Jeffrey Howeth Professional Engineer Opinion / Calculations

THE WATER PRESSURE AND FLOW ARE NOT AVAILABLE

THERE ARE TWO DEFINITIVE REASONS:

1. TOWN OF TAPPAHANNOCK LETTER

2. JEFFREY HOWETH PROFESSIONAL ENGINEER OPINION/CALCULATIONS
The letter from the Town of Tappahannock was based on incorrect engineering information

“….with the information that the Town of Tappahannock has been provided …”
Hydraulic calculations as submitted by Jeffrey Howeth

A. GROSS ANALYSIS - IDH FORTMT (C=180)
ENNISTONE APARTMENTS
TOWN OF TAHOMAHACK

SUBTRACTING 185 CFT FOR UNDERGROWN DIRT AND
BASED UPON EXISTING MATERIAL
REMOVAL AND FLOOD FROM HYDRAULIC FLOOD TEST
EQUIPMENT 1 REASONS, NO FLOOD WASH AT
NEGATIVE CLOSURES ENSUES . FLOOD .50 CPM (9
REASONS PRESSURE OF X X PSI)

5.6 PSI DROP

1 PSI DROP

.4 PSI DROP

Drainage - Flood to Point (A) is

185 CPM (9 APARTMENT) = 4.5 CPM

MINIMUM

250 CPM AVAILM 14/11 CPM (700 CPM

AND

Flood to Point (B) is

185 CPM (9 APARTMENT) = 312 CPM

AND

Flood to Point (C) is

185 CPM (4 APARTMENT) = 208 CPM

AND

NO SUBMERSION AS WELLS AS NEGATIVE
CLOSURE COULD NOT BE MET.
Hydrant Test
875 GPM @ 28 psi residual

Dolan Property
Intersection of White Oak And Hobbs Hole Drive

8" PVC Line
Aerial view of town water supply with flow direction
Hydraulic Calculation from Hydrant Test location to intersection of White Oak Drive & Hobbs Hole Drive

Pressure loss calculation utilizing the Hazen-Williams formula

\[ P = \frac{4.52Q^{1.85}}{(C^{1.85} \times d^{4.87})} \]

With the following assumptions:
- \( P \) = frictional loss (psi/ft of pipe) = .00678
- \( Q \) = Flow (875 gpm)
- \( C \) = friction loss coefficient (140 for aged PVC)
- \( d \) = actual internal diameter of pipe (7.625”)

Pressure loss from intersection of White Oak Drive and Hobbs Hole Drive

Total pressure loss = \( P \) (psi/ft) x Length (1025’) = 6.95 psi

Residual Pressure of 28 psi at the hydrant test location would indicate a Residual Pressure of 35 psi at the intersection of White Oak and Hobbs Hole
Hydrant Test

875 GPM @ 28 psi residual

Dolan Property

Calculated
875 GPM @ 35 psi residual

8" PVC Line

Water supply pressure corrected to intersection of White Oak and Hobbs Hole
Corrected hydraulic calculations for available water supply

Accounting for a fully developed site (9 apartment buildings; 16 units each), fully developed Hobbs Hole Subdivision, domestic water demand and 250 gpm hydrant allowance ...........

Water flow and pressure available at the last hydrant would be approximately:
- 84 gpm domestic & sprinkler
- @ 33.6 psi residual

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>A)</td>
<td>Existing hydrant is atop unimproved drive and Hobbs hose drive (190 gpm)</td>
<td>78 psi + 7 psi = 85 psi</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B)</td>
<td>Int. Unite Canal &amp; Hobbs hose to Project entrance (562 gpm)</td>
<td>2.31 psi - (9.1 psi - 10&quot; D.I. 0.24 psi) = 34 psi</td>
</tr>
<tr>
<td>C)</td>
<td>Project entrance to last hydrant (458 gpm)</td>
<td>33.6 psi - (500 psi - 10&quot; D.I. 0.16 psi) = 33.6 psi</td>
</tr>
</tbody>
</table>

1 psi drop

.4 psi drop
To determine Automatic Sprinkler demand, Essex County hired 2 independent Fire Protection Engineers ...

**Mr. Joe Beck, P.E.**

Self Employed

- Fire Protection Engineer
- 19 years experience
- P.E. in NC, SC, TN, VA

Automatic Sprinkler Demand:
- 50-80 gpm flow
- 25-30 psi residual pressure

**Mr. Craig Thompson, P.E.**

Principal, Rhino Fire Protection

- Fire Protection Engineer
- 28 years experience
- P.E. in VA, MD, DC, CO, MI, TX, IL

Automatic Sprinkler Demand:
- 53.4 gpm flow
- 31.7 psi residual pressure

“There is enough water pressure and flow to protect the proposed two-story apartment building with an NFPA 13R system.”  **Joe Beck**  

“At this rate, the existing water supply is .... more than sufficient to supply a NFPA 13R system.”  **Craig Thompson**
Conclusion

Based on the most demanding future circumstance with Riverstone Development and Hobbs Hole Subdivision both fully developed:

Water Supply available to the most remote building 84 gpm * @ 33.6 psi

Automatic Sprinkler Demand required for building 54 gpm @ 31.7 psi

Accordingly, based on the information presently available, this project DOES NOT QUALIFY for the sprinkler exception under Section 903.2.8 of the Virginia Construction Code

* With provision to prevent domestic waterflow on sprinkler system activation per NFPA13R paragraph 9.3.1
Exhibit D

January 21, 2020 letter from Mr. Davis to Mr. Dolan; June 17, 2020 letter from Rhino Fire Protection; and June 28, 2020 letter from Mr. Davis to Mr. Howeth
I received your email dated January 13, 2020 and offer the following comments.

I was contacted by your architect, Bob Himmel in late December. Mr. Himmel was preparing a preliminary plan for the proposed apartment complex. I simply explained to Mr. Himmel the requirements set forth in section 903.2.8 of the Virginia Construction Code. This section requires that all R-2 occupancies require sprinkler systems unless the pressure and or volume or both are not available. On January 06, 2020, I received an email from Mr. James Sydnor (Tappahannock Town Manager) including data provided by Mr. J.L. Howeth P.C. suggesting that the Town of Tappahannock’s water system could not produce the required pressure and or volume to meet what he had calculated using an (ISO) fire flow calculator.

The Insurance Services Organization (ISO) fire flow calculator is one of the methodologies for calculating required water flow rates for sprinklered and non-sprinklered buildings. It is not a tool for determining the required design pressure and flow requirements for a fire sprinkler system. In order to determine the flow required for a fire sprinkler system in a R-2 occupancy, a fire protection design engineer needs to complete the hydraulic calculations for a system that complies with NFPA13R (specifically Chapter 7). Once the required flow and pressure are calculated, we can review the municipal water supply to determine if that water pressure and flow are available. Please have your design engineer provide the water flow and pressure requirements along with the supporting hydraulic calculations for a system that is compliant with NFPA13R for our review.

Yours Truly,

Alwyn W. Davis Jr.
Essex County Building Official
June 18, 2020

Jeffery Howeth  
P.O. Box 1684  
1019 Elm Street  
Tappahannock, VA 22560

Re: Sprinkler System- Riverstone Development

Dear Mr. Howeth,

I have received your correspondence on behalf of Riverstone Development, dated June 13, 2020. The Building Department of Essex County is continuing it’s effort to provide a decision on the sprinkler exception request and would like to get resolution on this matter promptly for Mr. and Mrs. Dolan, therefore, I am keeping this correspondence focused on data required for that decision.

In my letter of May 22, I requested answers to four (4) points of clarification. I am again requesting specific answers to questions 1 and 2 as your correspondence of June 13 was vague with superfluous information that did not address the questions.

1 - On your hydrant flow test results of 2/3/20, is the data for Hydrant A and Hydrant B transposed? If so, please update the test results report and resubmit.

2 - There is some confusion about why you would calculate a pressure drop from the test hydrant location to the intersection of White Oak Drive and Hobbs Hole Drive. When performing the hydrant flow test, it appears that 875 gpm would be flowing from the White Oak Drive and Hobbs Hole Drive intersection to the hydrant location, creating a pressure drop due to friction. It is logical that the residual pressure at the intersection would be higher than at the hydrant location. Please calculate the residual pressure at the intersection based on results of your flow test. We do not need an explanation; just the data (875 gpm @ ___ psi residual pressure available at the intersection).

Please provide prompt and specific answers to this request so that we can make progress toward a decision. If you have questions, please do not hesitate to contact Wayne Verlander at our office.

Mr. and Mrs. Dolan from Riverstone Development have been copied in the email correspondence as well.

Thank you,

Alwyn W. Davis, Jr.  
Building Official, Essex County
We have reviewed the above referenced project with respect to NFPA 13R. We have prepared a basic layout for a NFPA 13R system with the use of residential sprinklers. Per NFPA 13R 2013 edition, Section 7.1.1.3.1 – the number of design sprinklers shall be all of the sprinklers in the remote compartment (most remote room in the building) – up to a maximum of 4 sprinklers. Based on the attached calculations, the building sprinkler requirement would be 31.7 psi at 53.4 gpm. We also mimicked the domestic demand at 55 gpm (as a hose stream allowance). Even with the additional demand, the total system requirement is 108.4 gpm at 31.7 psi. At this rate, the existing water supply has 47.58 psi at 108.4 gpm – more than sufficient to supply a NFPA 13R system. The calculations are rudimentary, as not all elbows, tees, or other fittings are shown, but they are a good estimate to show that the system will work. This system does not require the entire building to be provided with 0.05 gpm/square foot – just the most remote compartment and even then only up to 4 sprinklers. Furthermore, NFPA 13R does not require the designer to consider the domestic flow in other buildings.
Exhibit E

Occoquan Land Development Corp. v. Cooper, 239 Va. 363 (1990);

Court of Appeals of Virginia
July 22, 2003, Decided
Record No. 0365-03-2

Reporter

DOUGLAS L. MILLER AND DEBORA A. MILLER v. STATE BUILDING CODE TECHNICAL REVIEW BOARD AND KING GEORGE COUNTY

Notice: [*1] PURSUANT TO THE APPLICABLE VIRGINIA CODE SECTION THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.


Prior History: FROM THE CIRCUIT COURT OF KING GEORGE COUNTY. Horace A. Revercomb, III, Judge.

Disposition: Affirmed.

Core Terms
zoning, certificate, ordinance, dwelling, moot,

Case Summary
Procedural Posture
Appellant owners appealed from a decision by the Virginia Board of Building Code of Appeals, which found that it did not have jurisdiction of the voiding of the owners' zoning permit. The owners appealed to appellee Virginia State Building Code Technical Review Board, which found the matter moot. The owners appealed to the Circuit Court of Prince George County (Virginia), which dismissed the appeal as moot. The owners appealed.

Overview
The owners neither appealed the Zoning Administrator's decision determining that the owners were in violation of the zoning ordinance, nor sought a special exemption from the zoning requirements. The decision by the Zoning Administrator was therefore final. As a result of the zoning violation, which was not subject to judicial review, the owners' building permit was revoked. A building permit was a necessary basis for the issuance of an occupancy permit. By focusing solely on appealing the denial of the certificate of occupancy, the owners failed to appeal the revocation of their building permit, to appeal
the Zoning Administrator’s ruling, or to seek a special exemption from the zoning requirements. Absent a valid building permit, however, the owners could not complete the dwelling and, consequently, could not obtain a certificate of occupancy. The trial court did not err in finding the issue moot.

**Outcome**  
The decision was summarily affirmed.

**LexisNexis® Headnotes**

- Administrative Law > Judicial Review > Reviewability > Standing  
- Business & Corporate Compliance > ... > Real Property Law > Zoning > Administrative Procedure  
- Real Property Law > Zoning > Judicial Review  

**HN1** Reviewability, Standing

See [Va. Code Ann. § 15.2-2311](#).

- Environmental Law > Land Use & Zoning > Judicial Review  
- Governments > Local Governments > Licenses  
- Real Property Law > Zoning > Judicial Review  

- Real Property Law > Zoning > General Overview  

**HN2** Land Use & Zoning, Judicial Review

A building permit is a necessary basis for the issuance of an occupancy permit.

- Real Property Law > Zoning > General Overview  

**HN3** Real Property Law, Zoning


- Civil Procedure > ... > Justiciability > Mootness > Real Controversy Requirement  

- Constitutional Law > The Judiciary > Case or Controversy > Advisory Opinions  

- Civil Procedure > ... > Justiciability > Mootness > General Overview  

- Constitutional Law > ... > Case or Controversy > Mootness > General Overview  

- Governments > Courts > Authority to Adjudicate  

**HN4** Mootness, Real Controversy Requirement

The duty of the appellate court as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions. Dismissal is the proper remedy if an event occurs which renders it impossible for a court, if it should decide the case in favor of the
plaintiff, to grant him any effectual relief whatever. Courts are not constituted to render advisory opinions, to decide moot questions or to answer inquiries which are merely speculative.

Counsel: (Douglas L. Miller; Debora A. Miller, Pro se, on briefs).

(Jerry W. Kilgore, Attorney General; Richard B. Zorn, Senior Assistant Attorney General; Deborah Love Feild, Assistant Attorney General; Matthew J. Britton, Commonwealth's Attorney, on brief), for appellees.

Judges: Present: Judges Benton, Humphreys and Senior Judge Overton.

Opinion

MEMORANDUM OPINION 1 PER CURIAM

Douglas and Debora Miller contend the trial judge erred in finding their appeal moot and upholding the decision of the State Building Code Technical Review Board. Upon reviewing the record and briefs of the parties, we conclude that this appeal is without merit. Accordingly, we summarily affirm the decision of the trial court. See Rule 5A:27 [*2] .

I.

In April 2000, the Millers obtained building and zoning permits to construct a two-family dwelling on the property designated on Tax Map 22, Parcel 103, and located at 5022/5024 Igo Road in King George County. Those applications contained a sketch detailing the placement of a new well, which was required to support the dwelling. To build the well, the Millers had obtained from the Department of Health the necessary permit, which indicated the well's location and mandated a "Health Dept Operation Permit & Well Inspection Report . . . prior to occupancy."

In early 2001, the Millers requested final inspections necessary to obtain a certificate of occupancy. On February 28, 2001, the Millers received a letter from the county's Zoning Administrator notifying them that they had violated the county's zoning ordinance. The notice advised the Millers that by "connecting the dwelling currently under construction . . . to the [pre-existing] well that currently serves [other] dwellings" they had "brought the total number of potable water connections served by this well up to three," in violation of the zoning ordinance. The notice further advised that, "in order that the dwelling [*3] . . . may continue to be constructed and may be occupied in the future," the Millers were required to comply with the local zoning ordinance or obtain a special exception. The notice informed the Millers "this decision shall be final and unappealable if not appealed within the thirty days" to the Board of Zoning Appeals.

By letter dated March 12, 2001, the Millers sent a letter to the county's Board of Building Code of Appeals objecting to the denial of temporary and final occupancy certificates. After perfecting the appeal, the Millers wrote to the Zoning Administrator to express their disagreement with his opinion that their remedy was to appeal to the Zoning Board of Appeals.

On April 3, 2001, the county's Building Official

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1 Pursuant to Code § 17.1-413, this opinion is not designated for publication.
notified the Millers that the Zoning Administrator had voided the Millers' zoning permit for the dwelling. The letter also explained that "the original approval of [the Millers' building] permit was based on the issuance of a zoning permit and installation of a well as stated on their signed application." The letter notified the Millers that their building permit had been revoked pursuant to the Uniform Statewide Building Code "until such time as [the Millers] can obtain a zoning permit."

The Board of Building Code of Appeals held a public hearing to consider the Millers' appeal. By resolution dated April 19, 2001, the Board of Building Code of Appeals "found that the appeal was based on a zoning administrator's decision" and that the Board "does not have jurisdiction or authority over a zoning administrator's decision and no adverse decision made by the Building Official had been properly appealed." It, therefore, dismissed the Millers' appeal.

The Millers then appealed to the State Building Code Technical Review Board, which conducted a hearing on the Millers' appeal. The Millers advised the Technical Review Board that the "appeal was based on the Certificate of Inspection not the letter from [the Zoning Administrator]." The Technical Review Board found that "the revocation of [the Millers' building] permit . . . rendered the appeal of the refusal to issue the [certificate of occupancy] moot because no dispute of whether to issue a [certificate of occupancy] can be considered if there is no valid [building permit]." The Technical Review Board also found that the Millers "failed to raise the revocation of the [building] permit as an issue for the . . . Board [of Building Code of Appeals] to consider" and had failed to timely file an appeal from the revocation decision. Thus, the Technical Review Board ruled that "the appeal of the revocation of the [building] permit is not properly before the Review Board" and ordered the Millers' "appeal of the code official's refusal to issue a [certificate of occupancy] to be . . . dismissed as moot."

The Millers appealed to the circuit court. After considering "the arguments by the parties, the pleadings and the record of the . . . Technical Review Board," the trial judge dismissed the appeal.

II.

Code § 15.2-2311 provides, in pertinent part, that "an appeal to the board [of zoning appeals] may be taken by any person aggrieved . . . by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article." In addition, the statute further provides as follows:

Any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within thirty days in accordance with this section, and that the decision shall be final and unappealable if not appealed within thirty days.

Code § 15.2-2311.

The record establishes that the Millers neither appealed the Zoning Administrator's decision, which determined that the Millers were in violation of the zoning ordinance, nor sought a special exemption from the zoning requirements. As the Supreme Court held in Gwinn v. Alward, 235 Va. 616, 621, 369 S.E.2d 410, 412, 4 Va. Law Rep. 3139 (1988), "the decision by the zoning administrator that [the land owner] was operating . . . on the property in violation of the zoning ordinance was a thing decided and was not subject to
attack by [the land owner] . . . because [the land owner] never appealed the various decisions in which he was declared in violation of the zoning ordinance." See also _Gwinn v. Collier_, 247 Va. 479, 484, 443 S.E.2d 161, 163-64, 10 Va. Law Rep. 1241 (1994).

As a result of the zoning violation, which is not now subject to judicial review, see id., the building permit was [*7] revoked. As manifested by the following provision, _HN2_ a building permit is a necessary basis for the issuance of an occupancy permit. _HN3_ "A certificate of occupancy, indicating completion of the work for which a permit was issued in accordance with this code and any pertinent laws and ordinances shall be obtained prior to any occupancy of a structure . . . ." 13 VAC 5-61-95 (emphasis added).

By focusing solely on appealing the denial of the certificate of occupancy, the Millers failed to appeal the revocation of their building permit, or to appeal the Zoning Administrator's ruling, or to seek a special exemption from the zoning requirements. Absent a valid building permit, however, the Millers could not complete the dwelling and, consequently, could not obtain a certificate of occupancy.

_HN4_ "The duty of this court as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions . . . ." Dismissal is the proper remedy if "an event occurs which renders it impossible for [a] court, if it should decide the case in favor of the plaintiff, to grant him any [*8] effectual relief whatever . . . ."

_City of Fairfax v. Shanklin_, 205 Va. 227, 229-30, 135 S.E.2d 773, 775-76 (1964))

The trial judge did not err in finding the issue moot. Accordingly, we summarily affirm the decision. See Rule 5A:27.

_Affirmed._
Occoquan Land Dev. Corp. v. Cooper

Supreme Court of Virginia
March 2, 1990
Record No. 890419

Reporter

Occoquan Land Development Corporation v. Claude G. Cooper, etc., et al.

Prior History: [***1] Appeal from a judgment of the Court of Appeals of Virginia.

Disposition: Reversed and final judgment.

Core Terms
notice, mailed

Case Summary

Procedural Posture
Appellees, county and related individuals, brought an action to review the decision of the state building code board that authorized restoration of certain permits to appellant developer. The developer filed a motion to dismiss, which the trial court granted. The Court of Appeals of Virginia reversed and the developer appealed.

Overview
The developer’s permits to build three residences had been revoked after flooding occurred in the area. The county revoked the permits on the ground that the applications did not contain complete soil drainage information. The local building code board ordered restoration of the permits, and the state board agreed. The trial court dismissed the county’s appeal on the ground that it had not been timely filed. The appellate court reversed and entered judgment for the county. On appeal, the court reversed and entered final judgment for the developer. The court found the county did not timely file its appeal. The court found the statute the county relied on, which required final decisions of state agencies to be served upon the parties by mail, did not deal with appeals, but with the duties of state agencies. The court found that Va. Sup. Ct. R. 2A:2, which specified that an appeal had to be filed within 30 days after entry of the final order, was controlling. The court found the date the state board entered its decision was the date the chairman signed the order, not the date on which the order was mailed. The county failed to timely file its appeal.

Outcome
The court reversed the judgment in favor of the county and entered final judgment in favor of
the developer.

LexisNexis® Headnotes

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Timing of Appeals

**HN1** Reviewability of Lower Court Decisions, Timing of Appeals

Va. Sup. Ct. R. 2A:2 provides in part that any party appealing from a case decision shall file, within 30 days after entry of the final order in the case decision, with the agency secretary a notice of appeal signed by him or his counsel.

Administrative Law > Judicial Review > Reviewability > Reviewable Agency Action

Environmental Law > Administrative Proceedings & Litigation > Judicial Review

**HN2** Reviewability, Reviewable Agency Action

Va. Code Ann. § 9-6.14:16(A) specifically provides for judicial review by an appropriate and timely court action against the agency as such or its officers or agents in the manner provided by the rules of the Supreme Court of Virginia. Therefore, the 30-day period specified in Va. Sup. Ct. R. Rule 2A:2 begins to run upon entry of the final order.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Timing of Appeals

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

**HN3** Reviewability of Lower Court Decisions, Timing of Appeals

The flexible standard of due process does not require any particular form of procedure and its requirements are non-technical.

Civil Procedure > ... > Pleadings > Time Limitations > General Overview

Governments > Courts > Rule Application & Interpretation

**HN4** Pleadings, Time Limitations

Va. Sup. Ct. R. 1:7 provides in part: Whenever a party is required or permitted under these Rules to do an act within a prescribed time after service of a paper upon him and the paper is served by mail, three days shall be added to the prescribed period.

Headnotes/Summary

Headnotes


A county issued plaintiff land development
company building permits for three single-family residences after the company's professional engineer certified that the information on its building permit applications was complete. During a storm the area was flooded and the county building official revoked the permits on the ground that the applications did not contain complete and accurate information. The company appealed the revocation to the local board of building code appeals, which ordered restoration of the permits conditioned upon full compliance with the building code and documentation establishing flood plains. The company appealed the action to the state Building Code Technical Review Board, which amended the local board's decision to provide that restoration of the permits should be conditioned only upon compliance with the provisions of the Virginia Uniform Statewide Building Code in effect at the time the permits were issued. Upon the county's motion the state board reconsidered the matter and adhered to its original decision. A copy of the final order was mailed to all parties on July 23, 1985. On August 21, 1985, in purported compliance with Rule 2A:2, dealing with notice of appeal under the Administrative Process Act, the county mailed a notice of appeal to the state board's secretary. On September 17, 1985, pursuant to the provisions of Rule 2A:4, the county filed its petition for appeal. The trial court sustained the defendant company's motion to dismiss the county's action on the ground that the notice of appeal had not been filed within the 30 days after entry of the final order in the case decision. The trial court found that even if the notice of appeal had been properly filed, there was no error in the state board's decision. The county appealed the trial court's decision to the Court of Appeals, which reversed the judgment of the trial court and entered final judgment for the county. The development company appeals.

1. If the county failed to file a timely notice of appeal, as the trial court ruled, that court had no further jurisdiction over the matter and there is no need to consider the county's substantive claims.

2. Even assuming that the pleadings contain a judicial admission by the state board, that admission does not bind the development company, which was not in privity with the state board.

3. A court cannot acquire jurisdiction by a party's consent to the existence of what is found to be an erroneous fact.

4. Code § 9-6.14:14 requires final decisions or orders of state agencies to be served upon the private parties by mail, but it does not deal with appeals, only with the duties of the various agencies.

5. Code § 9-6.14:16(A), on the other hand, specifically provides for judicial review by an appropriate and timely court action against the agency as provided by the rules of the Supreme Court of Virginia, which provide a 30-day period running from the entry of the final order.

6. Rule 2A:2 clearly provides that the appeal period begins upon the entry of the board's final order. Entry occurs when the judge signs the order reflecting the judgment previously pronounced and, in this case, that happened on July 20, 1985, the date the state board's chairman signed the final order.

7. In this case, the county had a reasonable time within which to file its notice of appeal, and its due process rights were not violated.

8. Rule 1:7 does not apply here since the time within which the appeal was to be filed was 30 days from the entry of the order, not 30 days from service of the order upon it.

9. Since the county failed to perfect its appeal
of a final order in a timely manner, the trial court was without jurisdiction to hear the case and the judgment of the court of appeals is reversed.

Syllabus

In a dispute involving county building permits, the county failed to perfect its appeal of a state board decision in a timely manner, and the trial court was without jurisdiction to hear the case. Therefore, the judgment of the Court of Appeals in the matter is reversed, and final judgment is entered on behalf of the plaintiff to whom the permits were issued.

Counsel: Thomas F. Farrell, II (Amy T. Holt; McGuire, Woods, Battle & Boothe, on brief), for appellant.

David T. Stitt, County Attorney (George A. Symanski, Jr., Senior Assistant County Attorney; J. Patrick Taves, Assistant County Attorney, on brief), for appellees.


Opinion by: WHITING

[*365] [**465] In this case, we resolve an alleged conflict between Rule 2A:2 of this Court and Code § 9-6.14:14, which involves the mandatory service requirements with respect to appeals of administrative agency decisions.

On May 23, 1983, Fairfax County issued building permits for three single-family residences to Occoquan Land Development Corporation (Occoquan) after Occoquan's professional engineer certified that the information on its building permit applications was complete. A few weeks after the building permits were issued, the area was flooded during a storm. On June 23, 1983, Claude G. Cooper, a Fairfax County building official, revoked the permits on the ground that the applications "did not contain complete and accurate information regarding soil and drainage conditions."

On October 1, 1984, Occoquan appealed Cooper's revocation to the Fairfax County Board of Building Code Appeals (the local board). The local board ordered restoration of the building permits, conditioned upon "full compliance with the Building Code and accompanied by Engineering Documentation [***6] on establishing flood plains and a Soils Report on each lot."

On November 19, 1984, Occoquan appealed the local board's action to the State Building Code Technical Review Board (the state board). After hearing evidence on January 11, 1985, the state board took the matter under advisement. On February 22, 1985, the state board amended the local board's decision to provide that restoration of the permit should be conditioned only upon compliance with "the provisions of the Virginia Uniform Statewide Building Code in effect at the time the permits
were issued." The state board's order recites that the decision was entered on February 22, 1985; however, its chairman signed the order reflecting the decision on April 2, 1985, and the secretary of the state board attested it on April 8, 1985.

Pursuant to Fairfax County's motion, on June 28, 1985, the state board reconsidered the matter, heard additional evidence and argument, and indicated to the parties that it adhered to its original conclusion. Later, the chairman of the state board signed the final order which confirmed its previous ruling. The final order concluded as follows:

[*366] This Decision has been entered this [***7] 28th day of June, 1984 [sic] A.D.

/s/ Bernard E. Cooper
Bernard E. Cooper, Chairman

July 20, 1985
Date

COPY TESTEE: [sic]

/s/ C. Sutton Mullen/Bl
C. Sutton Mullen, Secretary
State Building Code Technical Review Board

July 23, 1985
Date

A copy of the final order was mailed to all parties on July 23, 1985. On August 21, 1985, in purported compliance with Rule 2A:2, dealing with notices of appeal under the Administrative Process Act, Cooper, Jane W. Gwinn, Zoning Administrator for Fairfax County, and the Board of Supervisors of Fairfax County (collectively the county) mailed a notice of appeal to the [**466] state board's secretary. It was apparently received on August 22, 1985. On September 17, 1985, pursuant to the provisions of Rule 2A:4, the county filed its petition for appeal in the Circuit Court of Fairfax County, naming Occoquan [***8] and the state board as appellees.

The trial court sustained Occoquan's motion to dismiss the county's appeal on the ground that it had not been filed within the time required by Rule 2A:2. HN1 Rule 2A:2 provides in pertinent part that "[a]ny party appealing from a . . . case decision shall file, within 30 days after . . . entry of the final order in the case decision, with the agency secretary a notice of appeal signed by him or his counsel." Additionally, the trial court found that even if the notice of appeal had been properly filed, there was no error in the state board's decision.

The county appealed the trial court's decision to the Court of Appeals. On March 7, 1989, that court reversed the judgment of [*367] the trial court and entered final judgment for the county. Cooper v. Occoquan Land Development Corp., 8 Va. App. 1, 377 S.E.2d 631 (1989). We granted Occoquan this appeal, deeming the issues raised to have significant precedential value. Code § 17-116.07(B).

[1] First, we must decide whether the county failed to file a timely notice of appeal, as the trial court ruled. If so, the trial court had no further jurisdiction in the matter, [***9] and we need not consider the county's substantive claims. See Upshur v. Haynes Furniture Co., 228 Va. 595, 597, 324 S.E.2d 653, 654 (1985). The county advances four reasons why it did not lose its right to appeal. We find no merit in any of those reasons.

[2-3] First, the county argues that the state board's responsive pleading contains a judicial
admission which is dispositive of the issue. The county's petition for appeal to the circuit court alleged, and the state board's answer admitted, that "on July 23, 1985, the [state] Board reaffirmed the April 8, 1985, decision." (Emphasis added.) Assuming, but not deciding, that this was a judicial admission, it does not bind Occoquan, which was not in privity with the state board. See Wytheville Ice Co. v. Frick, 96 Va. 141, 144, 30 S.E. 491, 491-92 (1898); Fisher v. White, 94 Va. 236, 242, 26 S.E. 573, 575 (1897). Moreover, a court cannot acquire jurisdiction by a party's consent to the existence of what we find in this opinion to be an erroneous fact.

[4-5] Second, the county notes that, but for an exception inapplicable [***10] here, Code § 9-6.14:14 requires final decisions or orders of state agencies to "be served upon the private parties by mail." The county contends that the 30-day period set forth in Rule 2A:2 could not begin to run until the state board complied with this mandatory service requirement. Code § 9-6.14:14, however, does not deal with appeals but only with the duties of the various agencies. **[467]** Code § 9-6.14:16(A), on the other hand, specifically provides for judicial review by "an appropriate and timely court action against the agency as such or its officers or agents in the manner provided by the rules of the Supreme Court of Virginia." Therefore, the 30-day period specified in Rule 2A:2 begins to run upon "entry of the final order."

[6] Third, the county maintains that the date upon which the state board's decision was "entered" is unclear. According to the county, the date of entry might be June 28, 1985, in which event its due process rights might have been violated because notice of [*368] the order's entry was not mailed until July 23, 1985, and was not delivered until more than 30 days after the decision, too late to file a notice of appeal. Rule 2A:2, however, clearly provides [***11] that the appeal period begins upon the "entry of the [board's] final order." In an analogous context, dealing with appeals from final judgments of trial courts, we have held that a judgment is not ordinarily "entered" upon its oral pronouncement; its "entry" occurs when the judge signs an order prepared by counsel or the court, reflecting the judgment previously pronounced. Peyton v. Ellyson, 207 Va. 423, 430-31, 150 S.E.2d 104, 110 (1966); McDowell v. Dye, 193 Va. 390, 393-94, 69 S.E.2d 459, 462-63 (1952). Accordingly, the 30-day period within which the county was required to file its notice of appeal began on July 20, 1985, the date the state board's chairman signed the final order.

[7] **[467]** The flexible standard of due process does not require any particular form of procedure and its requirements are non-technical, Klimko v. Virginia Empl. Comm'n, 216 Va. 750, 760, 222 S.E.2d 559, 568, cert. denied, 429 U.S. 849 (1976). Thus, we conclude that in this case the county had a reasonable time in which to file its notice of appeal, and its due process rights [***12] were not violated.

[8] Finally, the county relies upon Rule 1:7, which provides in part:

 Whenever a party is required or permitted under these Rules to do an act within a prescribed time after service of a paper upon him and the paper is served by mail, three days shall be added to the prescribed period.

The county, however, was not required to file its appeal "within a prescribed time after service of" the order upon it; instead, it was required to file within 30 days of the entry of the final order. Therefore, Rule 1:7 does not apply here.

[9] We conclude that the county failed to perfect its appeal in a timely manner and, therefore, the trial court was without
jurisdiction to hear the case. Accordingly, we will reverse the judgment of the Court of Appeals, and, pursuant to the provisions of Code § 8.01-681, we will enter final judgment for Occoquan.

Reversed and final judgment.

End of Document
REQUEST FOR INTERPRETATION

TO: OFFICE OF THE STATE BUILDING CODE TECHNICAL REVIEW BOARD
VIRGINIA DEPT. OF HOUSING AND COMMUNITY DEVELOPMENT
Main Street Centre
600 E. Main Street, Suite 300
Richmond, Virginia 23219-1321
Tel: (804) 371-7150 Fax: (804) 371-7092
Email: sbco@dhcd.virginia.gov

From: Paula K Johnson  Property Maintenance Official City of Fredericksburg

Phone Number: 540-207-0388

Email Address: ubeturbutt@yahoo.com ( temporary during Covid )

Applicable Code: Virginia Maintenance Code

Code Section(s): VMC 104.5.2 & 606.1

Submitted by (signature): [Signature]   Date: 6-17-2020

QUESTION(S):

VMC 104.5.2 Allows for the code official to issue code modifications upon an application of owner or owners agent, Section 104.5.3.3. Code of Virginia Section 36-105.1 allows the locality to provide for elevator inspections by third party provided the inspector has met certification requirements of the Board of Housing and Community Development. Section 606.1 for inspections of elevators, escalators and dumbwaiters; All periodic inspections shall be performed in accordance with 8.11 of ASME A17.1.

QUESTION:

Does approval of a modification to allow elevators, escalators or similar conveyances to be placed in service and maintained in service/ tested without the witnessing inspection by a DHCD-certified elevator inspector meet the spirit and intent of the USBC?
(Page left blank intentionally)
CHAPTER 1 ADMINISTRATION

104.5.2 Issuance of modifications.
Upon written application by an owner or an owner’s agent, the code official may approve a modification of any provision of this code provided the spirit and intent of the code are observed and public health, welfare and safety are assured. The decision of the code official concerning a modification shall be made in writing and the application for a modification and the decision of the code official concerning such modification shall be retained in the permanent records of the local enforcing agency.

104.5.2.1 Substantiation of modification.
The code official may require or may consider a statement from a professional engineer, architect or other person competent in the subject area of the application as to the equivalency of the proposed modification.
(Page left blank intentionally)
CHAPTER 6 MECHANICAL AND ELECTRICAL REQUIREMENTS

606.1 General.

Elevators, dumbwaiters, and escalators shall be maintained in compliance with ASME A17.1. The most current certificate of inspection shall be on display at all times within the elevator or attached to the escalator or dumbwaiter; or be available for public inspection in the office of the building operator; or be posted in a publicly conspicuous location approved by the code official. Where not displayed in the elevator or attached on the escalator or dumbwaiter, there shall be a notice where the certificate of inspection is available for inspection. An annual periodic inspection and test is required of elevators and escalators. A locality shall be permitted to require a 6-month periodic inspection and test. All periodic inspections shall be performed in accordance with Section 8.11 of ASME A17.1. The code official may also provide for such inspection by an approved agency or through agreement with other local certified elevator inspectors. An approved agency includes any individual, partnership, or corporation who has met the certification requirements established by the VCS.
(Page left blank intentionally)
Addendum to the September 18, 2020 Agenda Package

Calculations for the letter found on page 239 of the agenda package
(Page left blank intentionally)
DRAWING NUMBER: XXX         DATE: JUN 17, 2020

-DESIGN DATA-

HYDRAULIC AREA: 2ND FLOOR UNIT

OCCUPANCY CLASSIFICATION: RESIDENTIAL 13R

DENSITY: 0.05 gpm/sq. ft.

AREA OF APPLICATION: 4 SPRINKLERS IN UNIT

COVERAGE PER SPRINKLER: 256 sq. ft.

TYPE OF SPRINKLERS CALCULATED: PENDENT, K 4.9

NUMBER OF SPRINKLERS CALCULATED: 4

WATER SUPPLY

   Source: HYDRANT XXX   Test Date: XXX

Source Elevation Relative to Finished Floor Level: -5 ft.

   Source: HYD

Static:  48 psi Residual:  28 psi Flow:  875.0 gpm

NAME OF DESIGNER: HUY THAI / CRAIG P. THOMPSON, P.E.

NOTES:
Calculation were performed using Viking Residential Pendent Sprinkler head (VK468) and designed per NFPA 13R and NFPA 13. The 55 GPM added in mechanical room.
Calculations performed by HASS under license # 16121837 , granted by HRS SYSTEMS, INC.
(Notes continue after pipe calculations results.)
WATER SUPPLY ANALYSIS

Static: 48.00 psi Resid: 28.00 psi Flow: 875.0 gpm

LEGEND
1  Available pressure
   47.58 psi @ 108.4 gpm
2  Required pressure
   31.70 psi @ 108.4 gpm
1A  Avail. OnSite Demand Press.
   47.58 psi @ 53.4 gpm
2A  Req. OnSite Demand Press.
   31.70 psi @ 53.4 gpm
A. Source Supply Curve
B. System Demand Curve
C. Available at Source

Note: (1) Dashed Lines indicate extrapolated values from Test Results
(2) On Site pressures are based on hose stream deduction at the source
NFPA WATER SUPPLY DATA

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AGGREGATE FLOW ANALYSIS:

TOTAL FLOW AT SOURCE: 108.4 GPM
TOTAL HOSE STREAM ALLOWANCE AT SOURCE: 55.0 GPM
OTHER HOSE STREAM ALLOWANCES: 0.0 GPM
TOTAL DISCHARGE FROM ACTIVE SPRINKLERS: 53.4 GPM

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### Notes (HASS):

1. Calculations were performed by the HASS 8.8 D computer program in accordance with NFPA13 (2019) under license no. 16121837 granted by HRS Systems, Inc. 208 Southside Square Petersburg, TN 37144 (931) 659-9760

2. The system has been calculated to provide an average imbalance at each node of 0.004 gpm and a maximum imbalance at any node of 0.070 gpm.

3. Total pressure at each node is used in balancing the system. Maximum water velocity is 10.2 ft/sec at pipe 5.

4. Items listed in bold print on the cover sheet are automatically transferred from the calculation report.

5. Available pressure at source node HYD under full flow conditions is
47.39 psi with a flow of 133.20 gpm.

(6) PIPE FITTINGS TABLE

**HASS PIPE TABLE NAME:** standard.pip

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