

AGENDA

STATE BUILDING CODE TECHNICAL REVIEW BOARD

Friday, June 15, 2018

Virginia Housing Center
4224 Cox Road, Glen Allen, Virginia

- I. Roll Call **(TAB 1)**
- II. Election of Officers
- III. Approval of April 20, 2018 Minutes **(TAB 2)**
- IV. Approval of Final Order **(TAB 3)**

In Re: Appeal of Quantico City, LLC and Joel Rhoades
Appeal No 17-8
- V. Approval of Final Order **(TAB 4)**

In Re: Appeal of William Wiehe, Jr. - Vice Versa Corporation
Appeal No 17-9
- VI. Public Comment
- VII. Appeal Hearing **(TAB 5)**

In Re: Appeal of Unity Building LLC, - Pooya Jamalreza
Appeal No. 17-12
- VIII. Appeal Hearing **(TAB 6)**

In Re: Appeal of Dr. J. Matthew Hogendobler
Appeal No. 17-13
- IX. Secretary's Report

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STATE BUILDING CODE TECHNICAL REVIEW BOARD

James R. Dawson - Vice Chairman
(Virginia Fire Chiefs Association)

W. Keith Brower, Jr.
(Commonwealth at large)

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)

Joseph A. Kessler, III
(Associated General Contractors)

Eric Mays, PE
(Virginia Building and Code Officials Association)

E.G. "Rudy" Middleton
(Electrical Contractor)

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

Patricia S. O'Bannon
(Commonwealth at large)

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

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

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

Aaron Zdinak, PE
(Virginia Society of Professional Engineers)

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**STATE BUILDING CODE TECHNICAL REVIEW BOARD
MEETING MINUTES
April 20, 2018
Glen Allen, Virginia**

Members Present

Mr. James R. Dawson, Vice-Chairman
Mr. Vince Butler
Mr. Daniel Crigler
Mr. Eric Mays, PE
Ms. Patricia S. O'Bannon
Mr. J. Kenneth Payne, Jr.
Mr. W. Shaun Pharr, Esq.
Mr. Richard C. Witt
Mr. Aaron Zdinak, PE

Members Absent

Mr. W. Keith Brower
Mr. Alan D. Givens
Mr. Joseph Kessler
Mr. E. G. Middleton, III
Ms. Joanne Monday

Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order at approximately 10:00 a.m. by the Vice-Chairman James R. Dawson.

Roll Call

The roll was called by Mr. Hodge and a quorum was present. Mr. Justin I. Bell, the board's legal counsel from the Attorney General's Office, was also present.

Mr. Hodge welcomed new member J. Kenneth Payne, Jr., appointed to represent the American Institute of Architects as a replacement for long-time board member, Matthew Arnold. Mr. Payne provided a brief introduction of himself and indicated he was honored to serve. Board members welcomed him.

Approval of Minutes

The draft minutes of the January 19, 2018 meeting in the Review Board members' agenda package were considered. Ms. O'Bannon moved to approve the minutes as presented. The motion was seconded by Mr. Witt. The motion passed with Messrs. Crigler and Payne abstaining from the vote.

Final Orders

Appeal of Joshua and Makiba Gaines (Preliminary Hearing)
Appeal No. 17-11:

After consideration of the final order presented in the agenda package, Mr. Butler moved to approve the final order as written. Mr. Pharr seconded the motion and it passed with Messrs. Crigler and Payne abstaining from the vote.

Appeal of Harvey Dupree (AH Variety)
Appeal No. 17-10:

After consideration of the final order presented in the agenda package, Mr. Witt moved to approve the final order as written. Mr. Pharr seconded the motion and it passed with Messrs. Crigler and Payne abstaining from the vote.

Public Comment

Vice-Chairman Dawson opened the meeting for public comment. Mr. Hodge advised that no one had signed up to speak. With no one coming forward, Mr. Dawson closed the public comment period.

New Business

Hearing (To Determine Whether to Dismiss as Moot) Appeal of William Wiehe (Vice Versa Corp.); Appeal No. 17-9:

A hearing convened with Vice-Chairman Dawson serving as the presiding officer. The appeal involved citations under the Virginia Construction Code related to the deck guard system constructed at 6488 Lake Meadow Drive in Fairfax County.

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

Guy Tomberlin
Caleb Sulzen
James Anjam
William Wiehe

Also present was:

F. Hayden Coddling, Esq., legal counsel for Fairfax County
David McKennett, Esq.; legal counsel for William Wiehe

After discussion, Mr. Pharr moved that Item #3 in the Notice of Violation dated June 8, 2017 is properly before the Board. The motion was seconded by Mr. Payne. The motion failed with Messrs. Witt, Mays, Crigler, and Butler and Ms. O'Bannon voting in opposition.

After further discussion Mr. Mays moved that the Notice of Violation date June 8, 2017, found on pages 37 and 38 of the agenda package, is not properly before the Board because all violations have been resolved; therefore, that part of the appeal is moot. The motion was seconded by Mr. Crigler and passed with Messrs. Pharr and Payne voting in opposition.

After further discussion Mr. Mays moved that the letter of determination issued by the Building Official, found on page 180 of the agenda package, needed to be revised and reissued to simply state the final inspection is approved with no other conditions. The motion was seconded by Mr. Payne.

Mr. Mays then amended his motion. He moved that the letter of determination issued by the Building Official, found on page 217-218 of the agenda package, is properly before the Board. The motion was seconded by Mr. Butler and passed unanimously.

After testimony concluded, Vice-Chairman 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 William Wiehe (Vice Versa Corp.); Appeal No. 17-9:

After deliberation Mr. Mays moved that the Fairfax County final approval is constituted on pages 181, 217, and 218 of the April 20, 2018 agenda package. The motion was seconded by Mr. Butler.

After a brief discussion on how the Review Board sets out findings verses making formal motions Mr. Mays amended his motion. He moved that based on the findings of the Review Board that the Fairfax County final approval is constituted on pages 181, 217, and 218 of the April 20, 2018 agenda package, the Fairfax County Building Official should issue a new correspondence to the appellant re-stating their receipt of the product certification and that it is the determination of the County that those documents are acceptable, approve the deck final inspection with no stipulations, and close the permit. Prior to a second Mr. Mays rescinded his motion.

After further deliberation Mr. Mays moved that the screen shot of the Fairfax County FIDO permit system, found on page 181 of the April 20, 2018 Review Board agenda package, is the official approval of the final inspection. The motion was seconded by Mr. Crigler and passed with Messrs. Pharr and Payne voting in opposition.

Appeal of Quantico City LLC (Joel Rhoades); Appeal No. 17-8:

A hearing convened with Vice-Chairman Dawson serving as the presiding officer. The appeal involved citations under the Virginia Construction Code by the Prince William Building Official at a cinder block storage building owned by Quantico City LLC and located at 320 Fourth Avenue in the Town of Quantico.

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

Coleen Begin
Eric M. Mays

Also present was:

Robert Zelnick, Esq., legal counsel for Quantico City LLC
(Joel Rhoades)

The following exhibit was submitted by Joel Rhoades, through his attorney Robert Zelnick, without objection, to supplement the Review Board member's agenda package.

Appellant Exhibit A – Written arguments by Joel Rhoades

After testimony concluded, Vice-Chairman 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 Quantico City LLC (Joel Rhoades); Appeal No. 17-8:

After deliberation Mr. Witt moved to uphold the revocation of the permit by the Building Official and the decision of the local board. The motion was seconded by Mr. Crigler and passed with Mr. Pharr voting in opposition. Ms. O'Bannon further indicated that ignorance of the law was no excuse.

Appeal of Edward May (US Customs and Border Protection); Appeal No. 17-14

The appeal was withdrawn by email on April 12, 2018.

Secretary's Report

At the request of the Board at its January meeting Mr. Hodge provided clarity on whether or not the Review Board could request an opinion of the Attorney General. He included *Code of Virginia § 2.2-505 (Official Opinions of the Attorney General)* in the agenda package for their review. Mr. Hodge explained how § 2.2-505 indicates that the head of a board can request an opinion of the Attorney General only when the request for opinion directly relates to the discharge of duties of the official requesting the opinion. Mr. Hodge also provided an example of such an inquiry by the Review Board for their review.

Mr. Hodge informed the Board that the next meeting would be June 15, 2018.

Mr. Justin Bell, legal counsel from the Attorney General's office, gave the Review Board members an overview of the status of appeals further appealed to court.

Adjournment

There being no further business, the meeting was adjourned by proper motion at approximately 3:45 p.m.

Approved: June 15, 2018

Chairman, State Building Code Technical Review Board

Secretary, State Building Code Technical Review Board

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VIRGINIA:

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

IN RE: Appeal of Quantico City LLC and Joel Rhoades
Appeal No. 17-8

DECISION OF THE REVIEW BOARD

Procedural Background

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Case History

Property owned by Quantico City LLC and located at 320 Fourth Avenue in the Town of Quantico further appeal the decision of the Prince William County building inspections department and upheld by the local appeals board.

In May of 2017, after notification by Town of Quantico officials, the Prince William County building inspections department, which enforces the Virginia building code for the Town, issued a stop work order requiring a building permit to be obtained for the repairs being made to the building by Quantico City, LLC. Quantico City, LLC obtained the necessary permits from the County shortly thereafter.

Later in May of 2017, after further notification by Town of Quantico officials that Quantico City, LLC had not obtained zoning approval from the Town, the County building inspections department issued a letter revoking Quantico City LLC's building permits. In addition, the County

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building inspections department issued a violation notice under the Virginia Construction Code (VCC) for undergoing construction activities without a permit.

In June of 2017, Quantico City LLC, through legal counsel, filed an appeal of the action taken by the County building inspections department to the Prince William County Building Code Board of Appeals. The Building Official rescinded the violation notice for constructing work without a permit prior to the County appeals board hearing. The County appeals board heard the appeal the same month and ruled to uphold the revocation of the building permit and stop work order by County building inspections department based on the fact the Town of Quantico had not issued a Zoning Approval for the project.

Appearing at the State Building Code Technical Review Board (Review Board) hearing for Quantico City LLC was Robert Zelnick, legal counsel for Quantico City, LLC. Appearing at the Review Board hearing for Prince William County as Eric Mays, Building Official for the County.

Findings of the Review Board

The issue raised at the Review Board hearing by Quantico City, LLC, was that the VCC section 110.8 was not the appropriate section to revoke the Quantico City, LLC building permits that were issued in error by Prince William County.

During the hearing, Quantico City, LLC argued that in order for Prince William County to revoke the building permits issued to Quantico City, LLC one of the violations listed in the VCC section 110.8 had to exist. Quantico City, LLC further argued that none of the listed conditions in the VCC Section 110.8 existed; therefore, Prince William County did not have the authority to revoke Quantico City, LLC's building permits.

According to Prince William County, Quantico City, LLC did not provide the Town of Quantico zoning approval when applying for the building permits. Prince William County argued

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that Quantico City, LLC advocated none was required by not submitting the required approval. Prince William further argued that the lack of submittal of approval, whether through an act of omission, ignorance, or simple disagreement that the Town zoning approval was required was a misrepresentation of the facts on their application for permit.

Additionally, while Prince William County did not specifically ask Quantico City, LLC for the Town of Quantico zoning approval, the Prince William County building permit application contains the following statement:

“I hereby certify that I have the authority to make this foregoing application, that the information given is correct, and that all construction will comply with the Virginia Uniform Statewide Building Code and applicable ordinances. The permit holder is the responsible party for compliance with the VUSBC and other ordinances. I request that a certificate of use and occupancy be issued upon completion of the work authorized by the permit, provided all other requirements have been satisfied.”

The Review Board finds that the VCC Section 110.8 is the applicable section to cite for the revocation of Quantico City, LLC.’s building permits because zoning approval was not provided, thus misrepresenting the facts on the permit application and uphold the decision of the building official and local appeals board.

Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the revocation of the building permit by the Prince William County building inspections department, to be, and hereby is, upheld.

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Chairman, State Building Code Technical Review Board

Date entered: _____

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VIRGINIA:

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

IN RE: Appeal of Quantico City LLC and Joel Rhoades
 Appeal No. 17-8

DECISION OF THE REVIEW BOARD

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The Review Board finds that the VCC Section 110.8 is the applicable section to cite for the revocation of Quantico City, LLC’s building permits because zoning approval was not provided, thus misrepresenting the facts on the permit application and uphold the decision of the building official and local appeals board.

Asides from the issue of whether Section 110.8 allows for the building official to revoke the permit in this situation, there are other powers that the building official necessarily has in administering the VCC. There is no requirement that the building official stand by permits issued in error. In the case of issuing a permit in error, the option of rescinding the permit is available to the Building Official even if revocation is not.

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Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the revocation of the building permit by the Prince William County building inspections department, to be, and hereby is, upheld.

Chairman, State Building Code Technical Review Board

Date entered: _____

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD
(REVIEW BOARD)
(For Determination of Whether to Dismiss as Moot)

IN RE: Appeal of William Wiehe, Jr. – Vice Versa Corporation
Appeal No. 17-9

DECISION OF THE REVIEW BOARD

Procedural Background

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Case History

William Wiehe, Jr., President of Vice Versa Design Build Corporation (Vice Versa), originally filed an appeal of enforcement action under the Virginia Uniform Statewide Building Code, Part I, Construction (VCC), by the Fairfax County Department of Land Development Services (Fairfax County) relative to the home of Scott and Donna Voelkel located at 6488 Lake Meadow Drive

The notice of violation (NOV) listed three violations, two of which were resolved subsequent to the County appeals board hearing and decision; thus were removed from the appeal. The remaining issue involved the guardrail system installed on an outside deck. Vice Versa had the configuration of the deck guardrail system tested by an independent testing agency. The results of the testing were accepted by Fairfax County and the final inspection for the project was

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approved; however, Vice Versa believes further action by Fairfax County is necessary to resolve the issue to its satisfaction. Vice Versa sought nullification of the NOV and the vacating of the adverse decision by the Fairfax County Board of Building Code Appeals (County appeals board). Fairfax County was not willing to rescind the notice of violation.

Appearing at the State Building Code Technical Review Board (Review Board) hearing for Fairfax County were Hayden Coddling, legal counsel, and Guy Tomberlin, Chief of the Inspections Branch of Fairfax County. Appearing at the Review Board hearing for Vice Versa were David McKennett, legal counsel, and William Wiehe, President of Vice Versa.

Findings of the Review Board

I. Whether the Notice of Violation was properly before the Review Board.

Vice Versa argued that the guard system was installed properly and in accordance with an inspection report provided to Fairfax County at the time the deck was initially inspected and that the guard system is code compliant; furthermore, Vice Versa asserts that no changes, corrections, or modifications had been made to the guard system since its initial installation. Vice Versa further argued that they had not corrected any of the three violations listed in the NOV and that the deck construction was exactly as it was when the first rejected inspection was performed. Vice Versa argued that there were never any violations associated with the deck, that the deck has always been compliant, and that the rejected inspection and subsequent NOV were issued in error and should be rescinded.

Fairfax County argued that changes to the deck were made to resolve the first two cited violations on the NOV and the third cited violation was resolved by the submittal of the engineer report; therefore, all violations had been resolved so there was no right to appeal.

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The issue before the Review Board is whether to dismiss the appeal since Vice Versa resolved the three cited violations. Previous rulings of the Review Board hold that the latest application of the VCC by an enforcing agency to a given set of circumstances is the only application of the VCC which may be appealed and no right of appeal exists where a NOV has been resolved.¹

Vice Versa chose to resolve the cited violations and indeed resolved them. Therefore, no controversy is left for this Review Board to adjudicate and no right of appeal exists.

II. Whether the letter of determination issued by the Building Official, which included some specific conditions for the approval of the final inspection, was properly before the Board.

Vice Versa argued that the letter of determination issued by the Building Official contained conditions for the final inspection approval making the approval subject to review at any time; thus, potentially causing harm to his client in the future. Vice Versa argued that the conditions set forth in the final approval were extra legal and outside the scope of the VCC.

Fairfax County argued that the perceived letter of determination issued by the Building Official was nothing more than an electronic mail (email), sent at the request of Vice Versa, explaining the Building Official's rationale for accepting the engineer's report for the guard system and subsequent approval of the final inspection. Fairfax County further argued that no conditions of the final exist by providing screen shots of the Fairfax County permitting and inspections software system (Fairfax County FIDO system) for this project.

Fairfax County offered to write a new final approval letter with language clarifying that there were no conditions on the approval. Counsel for Vice Versa presented this as an option to Wiehe who declined the offer, indicating Vice Versa preferred to continue with the appeal.

¹ See Review Board Case No. 03-3. See also Review Board Case Nos. 95-2, 98-8, 98-21, 99-1, 00-2, and 01-11.

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The Review Board finds that the letter of determination issued by the Building Official is properly before the Board. The Review Board further finds that the letter of determination issued by the Building Official was an email of explanation rather than an attempt to condition the approval of the guard system and that the information provided via screen in the Fairfax County FIDO system constituted the final approval and no conditions of the final are listed.

Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders this appeal to be, and hereby is, dismissed.

Chairman, State Building Code Technical Review Board

Date entered: _____

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Unity Building, LLC./Pooya Jamalreza
Appeal No. 17-12

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VIRGINIA:

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

IN RE: Appeal of Unity Building, LLC/Pooya Jamalreza
Appeal No. 17-12

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. Unity Building, LLC/Pooya Jamalreza (Unity Building), the contractor for alterations to a home located at 902 McMillen Court, Great Falls, Virginia, owned by Nahid Momenian (Momenian), appeal citations under Part I of the Uniform Statewide Building Code (Virginia Construction Code or VCC) by the Land Development Services division of the County of Fairfax (County Land Development Services or CLDS)

2. In June of 2017, a representative of CLDS conducted an inspection at Momenian's home resulting in the issuance of a Corrective Work Order citing six VCC violations.

3. Unity Building filed a timely appeal to the Fairfax County Board of Building Code Appeals (County appeals board). The County appeals board subsequently conducted a hearing and ruled to uphold the Corrective Work Order.

4. Unity Building further filed a timely appeal to the Review Board.

5. Review Board staff conducted an informal fact-finding conference with all parties present in January of 2018 to clarify the issues in the appeal to the Review Board. At the informal fact-finding conference, Review Board staff discussed the nature of each cited violation on the Corrective Work Order to have Unity Building indicate whether they were challenging the merits of the cited violations. Unity Building indicated they were challenging both whether they were responsible for the cited violations since their contract excluded any work requiring permits and if

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it is determined that Unity Building is the responsible party, then they are also challenging the merits of the cited violations.

7. During the informal fact-finding conference, Review Board staff discussed the specific citations in the Corrective Work Order with the parties. The following is clarification of the citations in the Corrective Work Order:

Violation #1 108.1 – This citation is alleging that permits were required for (i) new electrical lights which were installed on the main level and new receptacles installed in the crown molding and cabinets for new recessed lighting in the living room, family room, and foyer, (ii) new flooring material installed in the foyer over deteriorated floor joists, and (iii) creating opening in existing walls.

Violation #2 113.3 – No clarification needed.

Violation #3 R501.2 and Violation #4 R502.8.1 – These two citations describe the same area. Invoice number I160701152, Items 1303, 1306, and 1307 indicate that Unity Building was to remove existing flooring in the foyer and raise the floor level and install new floor covering. In addition, the invoice indicates damage was discovered and repaired by Unity Building. The two cited violations in the Corrective Work Order were for the originally constructed reduced width of the floor joists in the foyer area to create the sunken floor level, plus the termite damage to those floor joists.

Violation #5 R601.2 - No clarification needed.

Violation #6 E3404.3 – The wiring described in this citation was in the dining room

8. Subsequent to the informal fact finding conference, Review Board staff drafted this staff document and forwarded it to the parties along with a copy of all documents 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.

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Suggested Issues for Resolution by the Review Board

1. Whether to overturn the decisions of CLDS and the County appeals board that Unity Building is the responsible party for the cited violations and hold that Unity Building is not responsible for the cited violations. And if ruling in the negative;

2. Whether to overturn any of the cited violation in the Corrective Work Order on their merits.

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Basic Documents

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County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

CORRECTIVE WORK ORDER

Virginia Construction Code

DATE OF ISSUANCE: June 6, 2017

METHOD OF SERVICE: Sheriff's Letter

LEGAL NOTICE ISSUED TO: Unity Building LLC
Pooya Jamalreza, Registered Agent
30 Huntley Court
Sterling, Virginia 20165

CONTRACTOR LICENSE#: 2705159302

LOCATION OF VIOLATION: 902 McMillen Court
Great Falls, Virginia 22066

TAX MAP REF: 0121070105

CASE #: 201607206 **SR#:** 133178

The original CWO dated March 20, 2017 showing an inspection date of August 23, 2016 has been rescinded. This new CWO showing the correct dates is replacing that notice. We tried to serve this to you on April 11, 2017, but you failed to meet the Fairfax County Sheriff's Deputy as agreed.

Per authority granted by the Virginia Construction Code, inspections were made on October 18, 2016 and regarding the above referenced property. Violations of the 2012 Virginia Residential Code, effective July 14, 2014, the applicable building code were found. You have five days to abate the violations.

Violation #1 108.1 When Applications Are Required: Electrical wiring and outlets (lights and receptacles) we installed for a remodel on the main level. Rotten wood was covered up that should have been repaired. There were structural walls that were altered or removed entirely. There should have been both building and electrical permits issued.

Violation #2 113.3 Minimum Inspections: The work in question should have received both concealment and final inspections. All work has been concealed and none of the components of the framing or electrical work can be seen. Only electrical termination points can be viewed.

Violation #3 R501.2 "Floors" Requirements: The floor joists have been notched excessively and also are rotten in several locations due to termite damage. The joists are not able to

Land Development Services
12055 Government Center Parkway, Suite 444
Fairfax, Virginia 22035-5503
Phone 703-324-1780 • TTY 711 • FAX 703-653-6678
www.fairfaxcounty.gov

accommodate the loads implied. The joists must be replaced or another allowable engineered fix must be used to repair the damage.

Violation #4 R502.8.1 Sawn Lumber: The floor joists are notched in excess of one sixth their depth and are longer than one third the depth of the wood. The joists in question support the home's staircase which is part of the egress path.

Violation #5 R601.2 "Wall Construction" Requirements: The interior bearing wall was removed and the opening was widened to allow the dining room and living room to allow free passage between the two spaces. A header would have been required to allow the wall space to be opened and carry the floor load sitting above the new opening. The header installed would have required bearing blocks in the floor system below. The weight must be transferred through material that is strong enough to support the loads in question and is typically made up of 2X4's nailed together. Bearing blocks transfer loads from the floor above and sit touching the bottom of the plywood sheathing used to create the floor surface down to the top of the beam used to carry the floor loads to either a pier footing or the foundation wall. The framing has been concealed so there is no way to verify the header is solid or even the right size capable of handling the floor loads implied upon it. The ceiling in the finished basement was never opened up so bearing blocks could not have been installed under the king and jack stud locations.

Violation #6 E3404.3 Circuit Characteristics: The grounding electrode was cut off at the delivery point leaving the circuit without a grounding path in the case of a fault. The wire must be rerun or done in such a way that the bare grounding conductor path can be maintained from the device back to the panelboard.

You are directed to notify Scott Hagerty, Combination Inspector, by return correspondence to 12055 Government Center Parkway, Suite 334, Fairfax, VA 22035 or by telephone at 703-508-5402. Failure to do so shall result in the immediate initiation of a Notice of Violation and eventual legal action to bring the above referenced property into compliance.

If you have any questions, you may contact Scott Hagerty at 703-508-5402 cell, 703-324-4038 office.

Order Issued By: Scott Hagerty
Technical Assistant to the Building Official
Land Development Services
Scott.hagerty@fairfaxcounty.gov

Signature: _____



Luter, William <travis.luter@dhcd.virginia.gov>

Fwd: Unity Building, LLC. Notice of Violation

Unity Building, LLC <unitybuildingllc@gmail.com>
To: "Luter, Travis (DHCD)" <travis.luter@dhcd.virginia.gov>
Cc: jgpc@verizon.net

Thu, Apr 26, 2018 at 10:49 AM

Mr. Luter --

This request is coming after:

- 1) Completion of the local appeal hearing,
- 2) Successful submission of an appeal to the state, and
- 3) Completion of an informal fact finding meeting with the state.

Proof of appeal is included below. It clearly states that the appeal was accepted. This came directly from Mr. Brian Foley via Ms. Amy "Melissa" Smarr, both representatives of Fairfax County.

Thank you ~

----- Forwarded message -----

From: **Smarr, Melissa** <Amy.Smarr@fairfaxcounty.gov>
Date: Fri, Jun 16, 2017 at 3:58 PM
Subject: RE: Unity Building, LLC. Notice of Violation
To: Jahangir Ghobadi <jgpc@verizon.net>, "Hagerty, Scott" <Scott.Hagerty@fairfaxcounty.gov>
Cc: "Unity Building, LLC" <unitybuildingllc@gmail.com>, "Guerra-Moran, Carla C." <Carla.Guerra-Moran@fairfaxcounty.gov>, "Avalos, Esteban (DPOR) (Esteban.Avalos@dpor.virginia.gov)" <Esteban.Avalos@dpor.virginia.gov>

Sir:

We are taking the information you sent today as an appeal.

Ms. Guerra-Moran will be in touch about the hearing date.

Thank you very much.

Melissa

From: Jahangir Ghobadi [mailto:jgpc@verizon.net]
Sent: Friday, June 16, 2017 12:57 PM
To: Hagerty, Scott <Scott.Hagerty@fairfaxcounty.gov>
Cc: Smarr, Melissa <Amy.Smarr@fairfaxcounty.gov>; 'Unity Building, LLC' <unitybuildingllc@gmail.com>
Subject: Unity Building, LLC. Notice of Violation

Dear Mr. Hagerty,

Attached please find the response for "Notice of Violation", Case# 201607206, SR# 133178, Unity Building LLC.

Regards,

Jahangir Ghobadi

Attorney At Law

[10615 Judicial Drive, Suite 103](#)

[Fairfax, Virginia 22030](#)

Tel: (703)385-6440

Fax: (703)691-3031

JAHANGIR GHOBADI, P.C.
ATTORNEY AT LAW
10615 JUDICIAL DRIVE, SUITE 103
FAIRFAX, VIRGINIA 22030
(703)385-6440
jgpc@verizon.net

ADMITTED IN VIRGINIA
AND WASHINGTON, D.C.

FAX: (703)691-3031

June 16, 2017

By E-Mail & U.S. Mail

Mr. Scott Hagerty
Technical Assistant to the Building Official
Land Development Services
12055 Government Center Parkway, Suite 444
Fairfax, Virginia 22035-5503

Re: Notice of Violation
Unity Building, LLC
Case#: 201607206
SR#: 133178

Dear Mr. Hagerty:

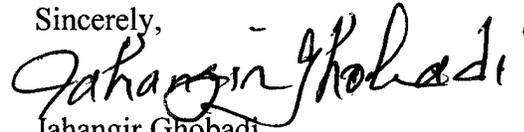
In response to the above referenced Notice of Violation dated June 16, 2017 please be informed of the following:

- A. On May 4, 2017 I explained in detail and with supporting document mailed to the attention of Mr. Esteban Avalos the extend of the involvement of the Unity Building, LLC and its owner Mr. Pooya Jamalreza. A copy of the letter of May 4, 2017 and its attachments are enclosed for your kind attention. The invoice included in the attachment clearly spell out what was executed on the property at 902 McMillen Court, Great Falls, VA.
Mr. Jamalreza was last on the property to work on her contract on or around August 24th. Mr. Jamalreza was last granted access to the garage on the property to collect remaining tools on or around September 19th.
Mr. Jamalreza had not been working on the contract on the jobsite for at least one month prior to the Fairfax County's stated inspection date and has no knowledge that other workers were granted access to the property. The homeowner previously regularly hired handymen herself to work on the property. She even placed advertisement online for a handyman on October 7 prior to Fairfax

County's stated inspection date Mr. Jamalreza was told by Mr. Hagerty of Fairfax County as well as Esteban Avalos of DPOR not to return to the jobsite at the homeowner's request. The homeowner always had access to contractors through her family's contracting business. The homeowner also regularly did work on the property herself in the areas she had hired Unity to complete the contract.

- B. In response to the listed violations Mr. Jamalreza has provided the following:
1. As to Violation 1, 2, 5, and 6, the works in question were not performed by Unity Building, LLC. The homeowner did work onsite herself while Unity was on the property, she has access to her family's construction company workers, and has hired workers directly herself (See attached ads for examples.). The homeowner for 902 McMillan Court needs to provide you with that information of who was responsible for violations.
 2. As to violations 3, and 4, the flooring was installed as per customer request. Subfloor and joists were not altered by Unity Building, LLC. Homeowner of 902 McMillen Court indicated that previous reinforcement work was completed on the subflooring. Homeowner would need to provide information as to the contractor doing that work.

Kindly consider the foregoing and inform my office of any correction in this matter.

Sincerely,

Jahangir Ghobadi

JAHANGIR GHOBADI, P.C.
ATTORNEY AT LAW
10615 JUDICIAL DRIVE, SUITE 103
FAIRFAX, VIRGINIA 22030
(703)385-6440
jgpc@verizon.net

ADMITTED IN VIRGINIA
AND WASHINGTON, D.C.

FAX: (703)691-3031

May 4, 2017

Via E-Mail & U.S. Mail:

Mr. Esteban Avalos
Regulatory Programs & Compliance
Department of Professional and Occupational Regulation
9960 Mayland Drive, Suite 400
Richmond, Virginia 23233

Re: Unity Building, LLC.

Dear Mr. Avalos:

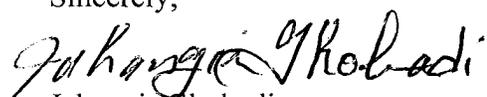
In reference to your e-mail of April 28, 2017 to Mr. Jamalreza, please be informed of the following:

1. Mr. Pooya Jamalreza, the owner and president of Unity Building, LLC has retained my legal services for representing his interest in issues related to the complaint of Fairfax County Government.
2. As to the response of Mr. Jamalreza to your requested information in the e-mail of April 28, 2017, please consider the following:
 - a. Unity Building never used any subcontractors in implementing the contract. The Unity Building did not do any work that required permits, particularly for electrical work, installing the header/support beam, and removing the kitchen wall.
 - b. The Unity Building did not complete the work listed in parties contract, because the property owner asked Mr. Jamalreza not to go back to the property and stopped making payments for the work done. The property owner even ordered new supply and did not pay for some items purchased by Unity Building.
 - c. The list of invoices and the new change orders with explanation of the detailed changes of relation with the property owner.

- d. A copy of the construction contract dated 5/16/2016 with a separate print of the first page that includes the classification for your attention.

Should you require further information or documents, please contact me at your convenience. Thank you for your consideration in this matter.

Sincerely,


Jahangir Ghobadi

Invoice	Contents	Total	Balance Due
160713153	Lighting, outlets, electrical	\$9,000.00	\$0, Paid Thank you for your payment
160701152	Main level flooring	\$18,900.00	\$0, Paid Thank you for your payment
160714155	Foyer damage repair	\$4,742.15	\$0, Paid Thank you for your payment
160718156	Entry door	\$3,140.14	\$0, Paid Thank you for your payment
160714154	Wall removal, repair, painting, crown molding	\$20,405.00	\$11,487.29 Thank you for your partial payment
160701151	Kitchen contract	\$51,553.00	\$22,453.00 Thank you for your partial payment
160719157	Fireplace Rebuild & Tile Purchase – \$1,500 Tile credited Inv. 160802160	\$6,890.00	\$6,890.00
160720158	Dining room wall tiling	\$7,500.56	\$7,500.56
160802160	New Invoice, finishing stairs, wood TV wall, upstairs bathrooms, tile only	\$6,102.06	\$6,102.06
		Total Balance	\$54,432.91
	Amount paid as of August 12, 2016	-\$30,000	
	Amount paid August 25, 2016	-\$5,000	
	NEW CHANGE ORDERS		
160809161	Change Order – Extra Kitchen Cabinetry & Stone	\$5,724.00	
160820164	Change Order - Kitchen Backsplash	\$1,653.60	
160825166	Change Order – Upstairs Crown & damages	\$3,707.33	
		Total incl. Change Orders 8/25/2016	\$30,517.84

Nahid Momenian has paid \$30,000 cash down payment on the balance as of August 12, 2016. Initial payment of \$10,000 to be paid by August 31, 2016. Second payment of \$10,000 to be paid by September 31, 2016. Remaining balance to be paid on a monthly basis in the amount

August 25, 2016

Unity Building, LLC

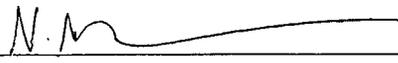
of \$5,000 minimum each month until such time as the balance is paid off (approximately 3 months). The total balance may be changed by change orders approved by Unity and the customer as needed. All amounts will be approved by all parties. The payment should be made on the 1st of each month beginning October 1, 2016. The balance will be charged an interest rate of 3.23% APR.

Payment may not be delayed or withheld for any reason. This payment plan was designed as a gesture of goodwill towards our client, Nahid Momenian, that she has agreed to all terms included on all invoices, and has approved all work already completed as well as currently scheduled work in her home. Any issues that arise inside the home, whether or not they are a result of work done on site, do not in any way affect this payment plan.

Should Ms. Momenian require additional work done on her property, a new invoice will be created detailing the scope of work to be done and whether or not it is a repair on existing work that Unity Building agrees to, or if it is new work being purchased. Any work for this payment plan that is ongoing will still be completed in a timely manner, with the understanding that the payment plan for the work has been agreed to. New work requests may not be added to this payment plan unless agreed to by both parties. All invoices have been reviewed in detail by both parties, and no modifications will be made to amounts listed on this agreement.

Should payment be delayed or withheld for any reason, Unity Building, LLC reserves the right to pursue legal action including, but not limited to, pursuing legal action against private properties held by Ms. Momenian. Nahid Momenian is responsible for paying legal fees should the agreement be in breach and legal action be required on the part of either party.

Change Orders: All invoices listed as change orders above reflect customer requested change orders. The work on these new projects is impacting the project timeline. Customer has been advised of the impact of her change orders on the project timeline. Original contract includes installation of master bedroom closet; closet materials are on-site, and customer requested Unity Building return in 3-4 months' time (as our schedule permits) to complete this work.


Nahid Momenian 8/25/2016


Poorna Samalasetta 8/29/2016

August 25, 2016

Unity Building, LLC

RESOLUTION

WHEREAS, the Fairfax County Board of Building Code Appeals (the Board) is duly appointed to resolve disputes arising out of enforcement of the USBC Code 2012 Edition;

and

WHEREAS, an appeal has been timely filed and brought to the attention of the Board; and
WHEREAS, a hearing has been duly held to consider the aforementioned appeal; and
WHEREAS, the Board has fully deliberated this matter; now, therefore, be it

RESOLVED, that the matter of

Appeal No. 170616.0 AP
In RE: 902 McMillen Ct - Unity, v. Fairfax County, DCC

The appeal is hereby DENIED (5-DENV) for the reasons set out below.

A FINDING THAT THE CORRECTIVE ACTION REQUIRED OF THE CONTRACTOR PERFORMING THE WORK ISSUED BY THE FCC WAS NOT IMPLEMENTED BY THE CONTRACTOR (PERFORMING UNPERMITTED WORK THAT REQUIRED PERMITS AND INSPECTIONS UNDER THE USBC)

FURTHER, be it known that:

1. This decision is solely for this case and its surrounding circumstances;
2. This decision does not serve as a precedent for any future cases or situations, regardless of how similar they may appear;
3. (If appropriate to the motion) No significant adverse conditions to life safety will result from this action; and
4. All of the following conditions be observed:

- a. N/A
- b. _____
- c. _____

Date: 10-11-17

Signature: [Signature]
Chairman, Board of Building Code Appeals

Note: Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board within twenty-one (21) days of receipt of this resolution. Application forms are available from the Virginia Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219 or by calling 804.371.7150.



Unity Building, LLC <unitybuildingllc@gmail.com>

BBCA - Oct. 11 - Resolution - Unity Building LLC

1 message

Guerra-Moran, Carla C. <Carla.Guerra-Moran@fairfaxcounty.gov>

Fri, Oct 13, 2017 at 11:30 AM

To: "jgpc@verizon.net" <jgpc@verizon.net>, "unitybuildingllc@gmail.com" <unitybuildingllc@gmail.com>



Dear Mr. Ghobadi,

I am attaching a copy of the resolution. I am also mail the original to you today.

Best Regards,

Carla

Carla Guerra-Moran

Secretary to the Board of Building Code Appeals

Carla.Guerra-Moran@fairfaxcounty.gov

12055 Government Center Parkway, Suite 334

Fairfax, VA 22035

703-324-5175

*Date of Receipt
10/13/17*

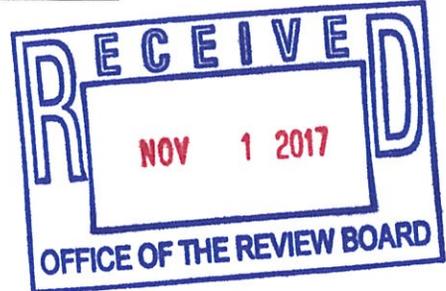
Resolution - Unity Building - 902 McMillen Court.pdf
61K

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
 Statewide Fire Prevention Code
 Industrialized Building Safety Regulations
 Amusement Device Regulations



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

Unity Building, LLC / Pooya Jamalreza
tel: 703-725-4050
address: PO Box 134, Great Falls, VA 22066
email: unitybuildingllc@gmail.com

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

Fairfax County, Dec

Additional Information (to be submitted with this application)

- Copy of enforcement decision being appealed
- Copy of record and decision of local government appeals board (if applicable and available)
- Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of October, 2017 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: Pooya Jamalreza
(please print or type)

28 October 2017

To Whom It May Concern:

The specific relief sought with regard to the October 11th finding is that the determination be **reviewed and overturned**. The 'violations' found by Fairfax County did not occur on this property under the supervision of Unity Building, LLC, "Unity."

The reason for this complaint is:

- Work performed by Unity required no permitting.
- Fairfax County has never demonstrated evidence of violations.
- Homeowner requested work requiring permits, but upon advisement that permitting must occur, changed her work requests as she specifically did not want to undertake work that required permitting and the associated fees.
- Unity Building Fairfax County repeatedly with proper original contract and valid Change Orders which included **both** the signatures of the homeowner and the company representative. Fairfax County neglected to provide this valid paperwork to the Appeals Board and instead supplied **invalid paperwork** presented by the homeowner.
- Appeals Board did not permit the proper paperwork to be presented or reviewed; asked only about invalid paperwork.
- Appeals Board vote was not unanimous; Board repeatedly questioned the methods and approaches of Mr. Hagerty in this case, questioning his lack of evidence of violations. Final vote was 3-2 even evaluating only the **invalid documentation**.

Outstanding Homeowner Balance

The homeowner at 902 McMillen Court owes in excess of \$50,000 to Unity Building, LLC for unpaid work and materials, as evidenced in her personal loan documentation. Homeowner ceased making payments in her payment plan, Unity stopped work to allow her time to make payments, then homeowner contacted Fairfax County in an attempt to find wrongdoing on the part of Unity

Building, LLC, and avoid making her final payments. Mr. Hagerty immediately advised the homeowner to stop making her payments, prior to inspection.

The homeowner is attempting to make fraudulent claims against Unity Building using Fairfax County Building Code to get out of her payments improperly.

Documentation

Unity has provided Fairfax with valid documentation demonstrating the violations did not occur. On October 11th, the Appeals Board continued to reference Change Orders marked "paid" but **bearing only one signature**, the homeowner. In the case of a "paid" invoice, it means work was ordered, customer paid in advance and desired proof of payment. She was given a "paid" invoices as receipt. In the case of her change orders, the homeowner changed the change order in the middle of implementing the work or when she found out permits were required.

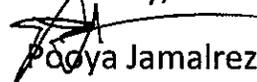
Regarding anything requested by the homeowner that she later found out required permitting, the customer declined to have work done requiring permitting and the work was therefore changed at her request to include only work not requiring a permit.

A change order bearing **both** the customer and the Company Signature is considered valid. The Appeals Board **only reviewed** invoices displaying only one invoice, therefore not a reflection of the work that was completed. Only when work was finalized could an accurate statement be provided to the homeowner, as the homeowner made a multitude of changes.

Appeals Process

Pooya Jamalreza nor his attorney were permitted to speak to point out the error. Pooya Jamalreza and his attorney had previously provided the finalized invoices to Fairfax County, as well as the original DPOR contract multiple times. Fairfax County neglected to evaluate this valid documentation, and neglected to provide this documentation to the Appeals Board, only supplying the Appeals Board with the homeowner-supplied paperwork.

Sincerely,


Pooya Jamalreza
Unity Building, LLC

Documents Submitted by Unity
Building, LLC.
(Pooya Jamalreza)

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Invoice



Unity Building, LLC
 PO Box 134
 Great Falls, Virginia 20166
 Office Phone: 7039359782
 Mobile Phone: 7039359782
 unitybuildingllc@gmail.com

Invoice Number: I160713153
 Invoice Date: 07/13/2016
 Payment Terms: Due On Receipt
 Invoice Amount: 6,429.50
 Created By: Pooya Jamalreza

Bill To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Ship To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1128	Recessed Lights LED 4-inch lights installed.	27.00	97.00	X	2,619.00
1128	Recessed Lights 4-inch LED lights, main level.	1.00	0.00	X	0.00
1311	Kitchen Lighting Replacement Only Replace 6" kitchen recessed lights with new LED lights and housing.	6.00	45.00	X	270.00
1312	Basement Lighting Replacement Replace 6" basement recessed lights with new LED lights and housing.	15.00	45.00	X	675.00
1313	Wall Outlet Replacement Replacement of wall receptacles throughout the home.	46.00	20.00	X	920.00
1314	Installation Of Dimmer Switches Installation and materials for wall dimmer switches.	5.00	95.00	X	475.00
1315	Installation Of Remote Control Light Switch	1.00	120.00	X	120.00
1316	Installation Decora Switches Installation and material for light switches throughout the home.	37.00	32.00	X	1,184.00
1328	Customer Credit	1.00	-209.28		-209.28

Subtotal: \$ 6,053.72
 VA Sales Tax Rate: 6%
 VA Sales Tax Amount: 375.78
 Invoice Amount \$ 6,429.50
 Cash on 07/14/2016: (9,000.00)
 Invoice Balance: \$ -2,570.50



Customer Signature 07/14/2016



Invoice

Paid

Unity Building, LLC
PO Box 134
Great Falls, Virginia 20166
Office Phone: 7039359782
Mobile Phone: 7039359782
unitybuildingllc@gmail.com

Invoice Number: I160701152
Invoice Date: 07/01/2016
Payment Terms: Due On Receipt
Invoice Amount: 18,900.00
Created By: Pooya Jamalreza

Bill To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Ship To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1303	Ceramic Foyer & Main Level HW Floor Installation Remove existing foyer ceramic tile and main level hardwood plus parquet. Repair squeaking plywood subfloor, install new 4" hardwood flooring. Install tile backer board, thinset, tile, and grout.	1.00	11,000.00	X	11,000.00
1304	Upgrade Hardwood Flooring To Unfinished Plus On- Site Sand & Finish Upgrade flooring purchase to unfinished hardwood flooring to be custom stained on site at job completion. Customer to select hardwood finish color.	1.00	750.00	X	750.00
1305	Upgrade HW To 5" Board No charge	1.00	0.00		0.00
1306	Foyer Repair Work Upon removal of foyer tile and underlying substrate, damage was discovered that had previously been repaired/replaced. Floor leveling will occur in coordination with pre-existing repaired work.	1.00	1,400.00		1,400.00
1307	Plywood Underlayment Installation of additional layer of plywood throughout main level to secure and reinforce flooring.	1.00	4,800.00	X	4,800.00
1329	Customer Credit	1.00	-43.00		-43.00

Comment:

Foyer material cost outstanding.

Subtotal:	\$ 17,907.00
VA Sales Tax Rate:	6%
VA Sales Tax Amount:	993.00
Invoice Amount	\$ 18,900.00
Cash on 06/20/2016:	(11,000.00)
Cash on 07/01/2016:	(5,000.00)
Cash on 07/12/2016:	(1,000.00)
Cash on 07/14/2016:	(1,000.00)
Cash on 07/20/2016:	(900.00)
Invoice Balance:	\$ 0.00


Customer Signature 07/01/2016


A/17

Invoice

Paid

Unity Building, LLC
PO Box 134
Great Falls, Virginia 20166
Office Phone: 7039359782
Mobile Phone: 7039359782
unitybuildingllc@gmail.com

Invoice Number: I160714155
Invoice Date: 07/14/2016
Payment Terms: Due On Receipt
Invoice Amount: 4,742.15
Created By: Pooya Jamalreza

Bill To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Ship To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1066	Floor Repair Stabilization including extra layering plywood, glue & nail down.	1.00	650.00	X	650.00
1323	Foyer Tile Charge Foyer marble tile purchase	110.00	17.30	X	1,903.00
1324	Foyer Marble Installation Installation charge for marble flooring.	1.00	1,200.00	X	1,200.00
1325	Tile Restocking Fee	2.00	150.00	X	300.00
1326	Tile Transportation Fee Return 2 loads tile, delivery 3rd tile. No charge as per customer request.	2.00	0.00	X	0.00
1337	Foyer Decorative Inserts -- Materials Only Decorative tile accents to be installed between marble tiles.	1.00	170.73	X	170.73
1339	Marble Foyer Tile Freight Fee	1.00	250.00	X	250.00

Comment:

Any change to product selection may result in charges due to pricing differentials on different types of material, as well as return/restocking fee. Invoices to be paid with 2 weeks of presentation & customer approval to avoid 20% late payment charge each week payment is delayed.

Subtotal: \$ 4,473.73
VA Sales Tax Rate: 6%
VA Sales Tax Amount: 268.42
Invoice Amount \$ 4,742.15
Cash on 07/29/2016: (4,742.15)
Invoice Balance: \$ 0.00


Customer Signature 07/22/2016



Invoice

Paid

Unity Building, LLC
PO Box 134
Great Falls, Virginia 20166
Office Phone: 7039359782
Mobile Phone: 7039359782
unitybuildingllc@gmail.com

Invoice Number: 1160718156
Invoice Date: 07/18/2016
Payment Terms: Due On Receipt
Invoice Amount: 3,140.14
Created By: Pooya Jamalreza

Bill To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Ship To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1334	Entry Door With Sidelights Custom order entry door plus delights.	1.00	1,069.00	X	1,069.00
1335	Door Installation Installation of front entry door with skylights.	1.00	1,800.00	X	1,800.00
1336	Shipping Charge	1.00	99.00		99.00

Comment:

Any change to product selection may result in charges due to pricing differentials on different types of material, as well as return/restocking fee. Invoices to be paid with 2 weeks of presentation & customer approval to avoid 20% late payment charge each week payment is delayed.

Subtotal: \$ 2,968.00
VA Sales Tax Rate: 6%
VA Sales Tax Amount: 172.14
Invoice Amount \$ 3,140.14
Cash on 07/26/2016: (1,800.00)
Cash on 07/29/2016: (1,340.14)
Invoice Balance: \$ 0.00


Customer Signature 07/22/2016



Invoice

Unity Building, LLC
 PO Box 134
 Great Falls, Virginia 20166
 Office Phone: 7039359782
 Mobile Phone: 7039359782
 unitybuildingllc@gmail.com

Invoice Number: I160714154
 Invoice Date: 07/14/2016
 Payment Terms: Due On Receipt
 Invoice Amount: 20,405.00
 Created By: Pooya Jamalreza

Bill To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

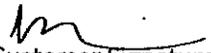
Ship To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1098	Wall Patch And Painting Repair of drywall, patching & painting work.	1.00	4,800.00	X	4,800.00
1319	Crown Moulding Installation Installation of crown moulding throughout the main level, in areas designated by customer.	1.00	4,000.00	X	4,000.00
1320	Baseboard Installation Installation and materials for baseboard throughout home.	1.00	2,000.00	X	2,000.00
1321	LED Lighting Installation Crown Moulding Installation of crown moulding LED lighting.	1.00	3,500.00	X	3,500.00
1351	Kitchen Wall Rebuild Adding to kitchen wall for extra thickness support for cabinetry installation.	1.00	450.00	X	450.00
1352	Interior Painting Painting of interior walls and ceilings at 3 coats per surface. Rooms to be painted include: main level foyer, living room, family room, dining room, and kitchen along with all coordinating ceilings as well as upstairs ceilings where lighting was installed.	1.00	4,500.00	X	4,500.00
1356	Septic Safe Disposal No charge	1.00	0.00		0.00

Comment:

Any changes to product selection may result in charges due to pricing differentials on different types of material, as well as return/restocking fees. Invoices to be paid within 2 weeks of presentation & customer approval to avoid 20% late payment charges each week payment is delayed.

Subtotal: \$ 19,250.00
 VA Sales Tax Rate: 6%
 VA Sales Tax Amount: 1,155.00
 Invoice Amount \$ 20,405.00
 Cash on 07/29/2016: (8,917.71)
Invoice Balance: \$ 11,487.29


Customer Signature 07/22/2016



Invoice

Unity Building, LLC
 PO Box 134
 Great Falls, Virginia 20166
 Office Phone: 7039359782
 Mobile Phone: 7039359782
 unitybuildingllc@gmail.com

Invoice Number: I160701151
 Invoice Date: 07/01/2016
 Payment Terms: Due On Receipt
 Invoice Amount: 51,553.00
 Created By: Pooya Jamalreza

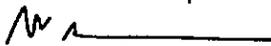
Bill To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Ship To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1245	Home Remodel Contract Inclusive contract reflecting price considerations for on-site work efficiencies to include: Kitchen remodel, Master Bedroom Closet remodel, and Hardwood Floor Refinishing. Specs detailed below.	1.00	46,000.00	X	46,000.00
1246	Kitchen Remodel Includes remodel of existing kitchen area to include: removal and disposal of existing cabinetry, countertop, sink, and faucet; inspection of bulkheads and duct work to attempt to open areas fully to ceiling; removal and replacement of existing appliances; installation of customer-approved cabinetry in existing cabinet space as well as new cabinetry to replace pantry; installation of LED lighting in kitchen area, installation of customer selected countertop; installation of new sink & faucet; installation of crown molding. Unity to provide all cabinetry, countertops, LED lighting, crown molding, sink, faucet. Includes installation of customer-selected backsplash throughout existing kitchen layout. Kitchen installation will use all existing appliances.	1.00	0.00		0.00
1247	Kitchen Flooring Replacement Unity to remove and dispose of 2 layers of hardwood flooring in kitchen. Unity to stabilize/screw down kitchen flooring as need to eliminate noise/vibrations for new installation. Unity to replace existing flooring with customer-approved ceramic tile, including durock, thinset and grout. Includes takeup and removal of existing flooring and installation of new ceramic flooring.	1.00	0.00		0.00
1248	Dining Room Cabinetry Customer to be provided with built-in dining room	1.00	0.00		0.00

	base cabinetry of her choosing. Countertop to be customer-selected surface.				
1249	Flooring Sand & Finish Upon or close to completion of kitchen remodel work, flooring in family room, living room, and dining room to be sanded down and refinished to even out discolorations. Includes removal and return of furniture for these areas.	1.00	0.00		0.00
1250	Master Bedroom Closet Includes removal of existing closet cabinetry and installation of new, closet organization system. Allowances to be made for storage of shoes, dresses, full length pants, shirts, etc as currently in closet storage. Access to attic panel will be retained, and venting will not be blocked.	1.00	0.00		0.00
1301	Add 30" Undermount Microwave Section New cabinet section, 30" including base cabinet, microwave cabinet, upper cabinet, stone, backsplash and matching crown moulding	1.00	2,450.00	X	2,450.00
1302	Upgrade Cabinets To 36" Plus Crown Moulding Upgrade cabinets from 30" to 36" cabinets plus matching crown molding. cabinets will be a few inches below ceiling.	1.00	1,600.00	X	1,600.00
1308	Cash Payment Credit Customer credit for payment in cash.	1.00	-1,500.00		-1,500.00

Subtotal: \$ 48,550.00
 VA Sales Tax Rate: 6%
 VA Sales Tax Amount: 3,003.00
 Invoice Amount \$ 51,553.00
 Cash on 05/01/2016: (7,000.00)
 Cash on 05/01/2016: (4,000.00)
 Cash on 05/07/2016: (10,000.00)
 Cash on 05/08/2016: (4,000.00)
 Cash on 07/20/2016: (4,100.00)
Invoice Balance: \$ 22,453.00


 Customer Signature 07/01/2016



Invoice

Unity Building, LLC
PO Box 134
Great Falls, Virginia 20166
Office Phone: 7039359782
Mobile Phone: 7039359782
unitybuildingllc@gmail.com

Invoice Number: I160719157
Invoice Date: 07/18/2016
Payment Terms: Due On Receipt
Invoice Amount: 6,890.00
Created By: Pooya Jamalreza

Bill To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

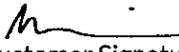
Ship To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1332	Fireplace Rebuild Removal of brick facing, installation of stacked tile refacing.	1.00	5,000.00	X	5,000.00
1371	Additional Wall Tile Purchase Credit returned - Invoice I60802160	1.00	1,500.00	X	1,500.00

Comment:

Cost includes installation of quartz surface for floor area in front of fireplace. Any change to surface selection may result in charges due to pricing differentials on different types of material. In addition, customer must use same surface material as is used in dining room to avoid incurring any additional charges, so that one slab may be used for both applications. Invoices to be paid with 2 weeks of presentation & customer approval to avoid 20% late payment charge each week payment is delayed.

Subtotal: \$ 6,500.00
VA Sales Tax Rate: 6%
VA Sales Tax Amount: 390.00
Invoice Amount \$ 6,890.00


Customer Signature 07/22/2016



Invoice

Unity Building, LLC
PO Box 134
Great Falls, Virginia 20166
Office Phone: 7039359782
Mobile Phone: 7039359782
unitybuildingllc@gmail.com

Invoice Number: 1160720158
Invoice Date: 07/20/2016
Payment Terms: Due On Receipt
Invoice Amount: 7,500.56
Created By: Pooya Jamalreza

Bill To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

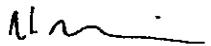
Ship To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

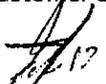
Item #	Item Name	Quantity	Unit Price	Taxable	Total
1355	Tiling Dining Room Wall	1.00	1,100.00	X	1,100.00
1341	Tile Material Purchase Customer exchanged original dining room wall tile purchase for different style tile. This exchange also includes installation of tile on stair risers on both stair cases.	120.00	49.80	X	5,976.00

Comment:

Any change to product selection may result in charges due to pricing differentials on different types of material, as well as return/restocking fee. Invoices to be paid with 2 weeks of presentation to avoid 20% late payment charge each week payment is delayed.

Subtotal: \$ 7,076.00
VA Sales Tax Rate: 6%
VA Sales Tax Amount: 424.56
Invoice Amount \$ 7,500.56


Customer Signature 07/22/2016



Invoice

Unity Building. LLC
 PO Box 134
 Great Falls, Virginia 20166
 Office Phone: 7039359782
 Mobile Phone: 7039359782
 unitybuildingllc@gmail.com

Invoice Number: I160802160
 Invoice Date: 08/01/2016
 Payment Terms: Due On Receipt
 Invoice Amount: 6,102.06
 Created By: Pooya Jamalreza

Bill To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Ship To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1357	Sand & Finish Stairs Sand & finish two sets of stairs to match main level flooring finish.	1.00	2,000.00	X	2,000.00
1358	Foyer Tile Backsplash	20.00	15.98	X	319.60
1360	Wood Wall	77.00	26.95	X	2,075.15
1361	Upstairs Bathroom Flooring Replace upstairs bathroom flooring. Unity Building responsible for removing existing floor tile and replacing floor tile with new customer selected ceramic tile.	2.00	500.00	X	1,000.00
1362	Upstairs Toilet Replacement Includes material and installation.	1.00	359.00	X	359.00
1363	Wood Wall Installation	1.00	850.00	X	850.00
1364	Installation of Iron Balusters Installation of iron balusters on entry stair case. replace existing wood.	1.00	450.00	X	450.00
1365	Stair Post	2.00	59.00	X	118.00
1366	Customer Tile Return	1.00	-1,500.00		-1,500.00

Comment:

Any change to product selection may result in charges due to pricing differentials on different types of material, as well as return/restocking fee. Material may not be changed once installation is complete. Invoices to be paid within 2 weeks of presentation to avoid 20% late payment charge each week payment is delayed.

Subtotal: \$ 5,671.75
 VA Sales Tax Rate: 6%
 VA Sales Tax Amount: 430.31
 Invoice Amount \$ 6,102.06

N.M.
Customer Signature 08/04/2016

[Handwritten signature]

Invoice

Unity Building, LLC
 PO Box 134
 Great Falls, Virginia 20166
 Office Phone: 7039359782
 Mobile Phone: 7039359782
 unitybuildingllc@gmail.com

Invoice Number: I160809161
 Invoice Date: 08/09/2016
 Payment Terms: Due On Receipt
 Invoice Amount: 5,724.00
 Created By: Pooya Jamalreza

Bill To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

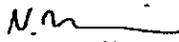
Ship To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1367	Cabinetry Order Tall pantry to be added to existing pantry and 46"-48" of cabinetry to be used as an island base. Customer has requested the same finish as kitchen cabinetry.	1.00	3,250.00	X	3,250.00
1368	Painting & Crown Moulding Adjustments Customer crown and painting changes. \$300 worth of labor done at no charge.	1.00	0.00	X	0.00
1369	Panel Purchase Purchase of paneling to cover backside of island cabinets.	1.00	250.00	X	250.00
1370	Extra Kitchen Countertop	1.00	1,900.00	X	1,900.00

Comment:

This change order is a reflection of customer changes to original kitchen design contract. Any additional change to product selection may result in charges due to pricing differentials on different types of material, as well as return/restocking fee. Invoices to be paid with 2 weeks of presentation & customer approval to avoid 20% late payment charge each week payment is delayed.

Subtotal: \$ 5,400.00
 VA Sales Tax Rate: 6%
 VA Sales Tax Amount: 324.00
 Invoice Amount \$ 5,724.00


 Customer Signature 08/25/2016



N.M.
Customer Signature 08/04/2016

A handwritten signature in black ink, appearing to be a stylized 'H' or similar character.

Invoice

Unity Building, LLC
PO Box 134
Great Falls, Virginia 20166
Office Phone: 7039359782
Mobile Phone: 7039359782
unitybuildingllc@gmail.com

Invoice Number: 1160820164
Invoice Date: 08/20/2016
Payment Terms: Due On Receipt
Invoice Amount: 1,653.60
Created By: Pooya Jamalreza

Bill To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Ship To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1381	Backsplash Kitchen Tile Purchase Glass customer approved kitchen backsplash.	65.00	24.00	X	1,560.00

Comment:

Due in full upon receipt as is material charge only. Any amount not paid upon receipt of invoice subject to 20% late payment charge each day payment is delayed. Backsplash tile approved by customer and may not be changed. Backsplash installation design requested to be staggered "brick style" installation as per customer request.

Subtotal: \$ 1,560.00
VA Sales Tax Rate: 6%
VA Sales Tax Amount: 93.60
Invoice Amount \$ 1,653.60


Customer Signature 08/20/2016



Invoice

Unity Building, LLC
 PO Box 134
 Great Falls, Virginia 20166
 Office Phone: 7039359782
 Mobile Phone: 7039359782
 unitybuildingllc@gmail.com

Invoice Number: I160825166
 Invoice Date: 08/25/2016
 Payment Terms: Due On Receipt
 Invoice Amount: 3,707.33
 Created By: Pooya Jamalreza

Bill To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Ship To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1387	Upstairs Crown Molding Crown molding installation in upstairs bedrooms and hallway. Single row of molding to be installed flush with the ceiling.	1.00	2,000.00	X	2,000.00
1388	Post Trimwork	2.00	45.00	X	90.00
1389	Handrail Connector Plate	4.00	15.60	X	62.40
1390	Iron Squares	32.00	3.25	X	104.00
1391	Wood Railing Product sold by linear foot	6.00	12.50	X	75.00
1392	Wood Base For Upstairs Installation	1.00	25.00	X	25.00
1393	Rail Mounting Screws	1.00	15.10	X	15.10
1394	TV Mounting Screws	1.00	18.49	X	18.49
1395	TV Installation Materials Excludes mounting screws. Includes materials only. Unity not responsible for any issues with TV installation.	1.00	85.00	X	85.00
1396	Garage Door Lock	1.00	40.00	X	40.00
1397	Manual Door Lock	3.00	54.00	X	162.00
1398	Molding - Wood Wall	1.00	62.00	X	62.00
1399	Faucet Credit	1.00	-150.00		-150.00
1400	Light Exchange CHANGE ORDER - customer requested to change all LED light strips to a different color white, no RGB.	1.00	460.00	X	460.00

1401	Main Level Crown Molding Change Order CHANGE ORDER - customer requested crown molding be returned to initial installation location. Customer required to pay all damage fee for this change order.	1.00	440.00	X	440.00
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Comment:

CHANGE ORDER - Due in full upon receipt. Any additional change to product selection may result in charges due to pricing differentials on different types of material, as well as return/restocking fee. Invoices to be paid with 2 weeks of presentation & customer approval to avoid 20% late payment charge each week payment is delayed.

Subtotal:	\$ 3,488.99
VA Sales Tax Rate:	6%
VA Sales Tax Amount:	218.34
Invoice Amount	\$ 3,707.33


Customer Signature 08/25/2016



Invoice	Contents	Total	Balance Due
160713153	Lighting, outlets, electrical	\$9,000.00	\$0, Paid Thank you for your payment
160701152	Main level flooring	\$18,900.00	\$0, Paid Thank you for your payment
160714155	Foyer damage repair	\$4,742.15	\$0, Paid Thank you for your payment
160718156	Entry door	\$3,140.14	\$0, Paid Thank you for your payment
160714154	Wall removal, repair, painting, crown molding	\$20,405.00	\$11,487.29 Thank you for your partial payment
160701151	Kitchen contract	\$51,553.00	\$22,453.00 Thank you for your partial payment
160719157	Fireplace Rebuild & Tile Purchase – \$1,500 Tile credited Inv. 160802160	\$6,890.00	\$6,890.00
160720158	Dining room wall tiling	\$7,500.56	\$7,500.56
160802160	New Invoice, finishing stairs, wood TV wall, upstairs bathrooms, tile only	\$6,102.06	\$6,102.06
		Total Balance	\$54,432.91
	Amount paid as of August 12, 2016	-\$30,000	
	Amount paid August 25, 2016	-\$5,000	
	NEW CHANGE ORDERS		
160809161	Change Order – Extra Kitchen Cabinetry & Stone	\$5,724.00	
160820164	Change Order - Kitchen Backsplash	\$1,653.60	
160825166	Change Order – Upstairs Crown & damages	\$3,707.33	
		Total incl. Change Orders 8/25/2016	\$30,517.84

Nahid Momenian has paid \$30,000 cash down payment on the balance as of August 12, 2016. Initial payment of \$10,000 to be paid by August 31, 2016. Second payment of \$10,000 to be paid by September 31, 2016. Remaining balance to be paid on a monthly basis in the amount

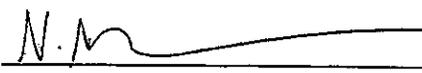
of \$5,000 minimum each month until such time as the balance is paid off (approximately 3 months). The total balance may be changed by change orders approved by Unity and the customer as needed. All amounts will be approved by all parties. The payment should be made on the 1st of each month beginning October 1, 2016. The balance will be charged an interest rate of 3.23% APR.

Payment may not be delayed or withheld for any reason. This payment plan was designed as a gesture of goodwill towards our client, Nahid Momenian, that she has agreed to all terms included on all invoices, and has approved all work already completed as well as currently scheduled work in her home. Any issues that arise inside the home, whether or not they are a result of work done on site, do not in any way affect this payment plan.

Should Ms. Momenian require additional work done on her property, a new invoice will be created detailing the scope of work to be done and whether or not it is a repair on existing work that Unity Building agrees to, or if it is new work being purchased. Any work for this payment plan that is ongoing will still be completed in a timely manner, with the understanding that the payment plan for the work has been agreed to. New work requests may not be added to this payment plan unless agreed to by both parties. All invoices have been reviewed in detail by both parties, and no modifications will be made to amounts listed on this agreement.

Should payment be delayed or withheld for any reason, Unity Building, LLC reserves the right to pursue legal action including, but not limited to, pursuing legal action against private properties held by Ms. Momenian. Nahid Momenian is responsible for paying legal fees should the agreement be in breach and legal action be required on the part of either party.

Change Orders: All invoices listed as change orders above reflect customer requested change orders. The work on these new projects is impacting the project timeline. Customer has been advised of the impact of her change orders on the project timeline. Original contract includes installation of master bedroom closet; closet materials are on-site, and customer requested Unity Building return in 3-4 months' time (as our schedule permits) to complete this work.


Nahid Momenian 8/25/2016


Roxa Samirata 8/29/2016

Construction Contract

This agreement is made by Unity Building, LLC (Contractor) and Nahid Momenian (Owner) on the date written beside our signatures.

Contractor

Unity Building, LLC
PO Box 134
Great Falls, Virginia 22066
Work Phone Number: 703-935-9949
Cell Phone Number: 703-935-9949
Email Address: unitybuildingllc@gmail.com
License Number: 2705159302
Unity's license is a Class A License, CBC/RBC Classification.
Unity's license expires on 12/31/2017.
Unity Building, LLC is operating as a limited liability company in the state of Virginia.
Unity Building, LLC will be referred to as Unity throughout this agreement.

Owner

Nahid Momenian
902 McMillen Court
Great Falls, Virginia 22066
Day Phone Number: 703-585-4175
Cell Phone Number: 703-585-4175
Email Address: nahidm@aol.com
Nahid Momenian will be referred to as Mrs. Momenian throughout this agreement.

The Construction Site

902 McMillen Court
Great Falls , Virginia 22066

I. Project Description

A. For a price identified below, Unity agrees to complete for Mrs. Momenian the Work identified in this agreement as the Momenian Remodel Project.

II. Contract Price

A. In addition to any other charges specified in this agreement, Mrs. Momenian agrees to pay Unity \$48,760.00 for completing the Work described as the Momenian Remodel Project.

III. Scheduled Start of Construction

- A. Work under this agreement will begin within 10 business days after the following contingencies have been met.
 - 1. Complete Plans and Specifications have been approved and initialed by both Mrs. Momenian and Unity.
 - 2. Mrs. Momenian has identified appropriate scheduling start date for her schedule.

IV. Scheduled Completion of Construction

A. Work under this agreement will be Substantially Complete within 60 calendar days after the date

V. Documents Incorporated

A. This agreement incorporates by reference certain disclosures and notices required by federal and state law. The following documents are incorporated as though included in full as part of this agreement.
Notice of Right to Cancel under Regulation Z (in duplicate)

B. This agreement incorporates by reference certain documents which define and describe the Work to be done. The following documents are incorporated as though included in full as part of this agreement.

1. Plans

Plans dated 5/9/2016.

Consisting of 1 sheet(s).

Prepared by Katie Kaufman.

Last changed on 5/13/2016.

And further identified as Kitchen & Closet Layout Design.

2. Proposal (Estimate or Bid)

Proposal (Estimate or Bid) dated 5/1/2016.

Consisting of 2 sheet(s).

For the amount of \$46,000.00 plus sales tax as applicable.

Entitled Momenian Home Remodel.

Other Contract Documents notwithstanding, the proposal by Unity dated 5/1/2016 defines Work to be completed under this agreement. Anything not included in the proposal dated 5/1/2016 is not included in this agreement and is not part of the Work. Unity will be entitled to a Change Order and additional compensation for anything in any Plans or Specifications or anything required by Law or ordinance that is not identified in the proposal dated 5/1/2016.

VI. Ownership of Plans

A. Plans, Drawings, Specifications and copies prepared for use in construction under this agreement are the property of Unity. Unity retains all common Law and statutory rights to these Plans, Drawings and Specifications. Mrs. Momenian agrees that these documents will not be used on any other project and, with the exception of one record set to be retained by Mrs. Momenian, will be returned to Unity on request.

VII. Scope of Work

A. Unity shall supervise and direct the Work and accepts responsibility for construction means, methods, techniques, sequences and procedures required to complete the Momenian Remodel Project in compliance with the Contract Documents.

B. Except for materials expressly designated otherwise in the Contract Documents, Unity warrants that all materials and equipment furnished under this contract shall be of good quality and new.

C. Unity is responsible for coordination of the various trades and deliveries of equipment, materials and supplies to minimize interference which could delay the Work or pose a hazard to life or property. Unity shall be responsible for allocation of tasks between trades and will be the final authority on location and routing of equipment and storage of materials on the Job Site.

D. Unity shall make a best effort to adopt and implement policies and practices designed to minimize Work stoppages, slowdowns, disputes or strikes. Except as may be specifically provided elsewhere in this or a separate agreement, Unity is not liable to Mrs. Momenian for damages suffered by Mrs. Momenian as a result of Work stoppages, slowdowns, disputes or strikes. Unity shall allocate labor tasks among the various trades in accordance with local custom, rules, jurisdictional awards, regulations, and decisions, regardless of any classification by the Contract Documents.

VIII. Cutting and Patching

- A. Unity will ensure that cutting and patching required to make building parts fit together properly is done by those skilled in the trade. Work completed by Unity will have the neatly finished appearance characteristic of professional grade construction.
- B. Unity will ensure that alteration Work done on existing building components does no damage either to the property of Mrs. Momenian or to Work done by others.
- C. Except as illustrated on building Plans or described in Contract Documents, Unity will not alter existing building components without consent of Mrs. Momenian. Unity will not alter or interfere with the Work of any Separate Contractor without prior consent of the Separate Contractor involved.

IX. Job Site Safety

- A. Unity will at all times take all reasonable precautions for the safety of employees and the public at the Job Site and will comply with all applicable safety Laws and regulations of federal, state, and local authorities (including building codes) and safety Requirements of Mrs. Momenian.

X. Protection of People and Property

A. Protection of Existing Work

- 1. Unity will erect and maintain during the construction period suitable dust-proof temporary partitions designed to protect the building contents and occupants against airborne dust and debris. Unity will ensure that air conditioning supply air inlets are covered to prevent contamination of the central air conditioning supply. When construction personnel are not on the Job Site, Unity shall provide temporary covers for doorways, roof, window sash, and other penetrations through the exterior wall.

B. Protection of New Work

- 1. Unity shall protect installed materials during the construction period so finished surfaces (such as plumbing fixtures, woodwork, trim, walls, floors, ceilings and counters) show no signs of damage or deterioration at the time of Substantial Completion. Except as otherwise provided in the Contract Documents, all Work shall be thoroughly cleaned and in a "like new" condition at the time of Substantial Completion. This includes dusting, window cleaning, floor cleaning, and removing grime and stains from finished surfaces.
- 2. During the period of construction, Unity will provide protection against the weather to prevent damage to building and materials from rain, wind, snow and ice.

XI. Compliance with Law

- A. Unity and Mrs. Momenian mutually commit to use reasonable care to meet the Requirements of state, federal and local Law when discharging their responsibilities under this agreement.
- B. Unity is licensed to do Work described in the Contract Documents. Unity will notify Mrs. Momenian of any change in that license status. Every Subcontractor working for Unity will hold a license appropriate for the Work performed.
- C. Except as required by Law, Mrs. Momenian is not responsible for any breach of Law by Unity. Except as required by Law, Unity is not responsible for any breach of Law by Mrs. Momenian.

XII. Job Cleanup

- A. Unity shall regularly remove from the Job Site and storage areas all surplus material, waste and debris resulting from the Work. Construction debris shall be removed to a legal refuse collection site with

disposal or recycling fees paid by Unity. At completion of the Work, Unity shall, in addition, remove from the Job Site all tools, equipment and scaffolding brought to the Job Site by Unity or Subcontractors. At Substantial Completion, exposed finishes of windows, doors, floors, walls, ceilings, fixtures and trim shall be cleaned and free of grime, stains, over spray, dirt and dust.

B. Unity shall provide a trash disposal facility on the Job Site for use by construction personnel. The on-site trash facility provided by Unity shall be of an appropriate size for the Project and placed in a location approved by Mrs. Momenian. All construction debris shall either be placed in the trash facility provided by Unity or hauled to a legal disposal site, at the discretion of Unity. When any trash container provided by Unity is full, contents shall be removed to a legal disposal facility at the expense of Unity.

XIII. Employee Relations

A. Unity is responsible for performance of all construction crews, including employees of Subcontractors, and shall enforce strict discipline and good order on the Job Site.

B. Unity will enforce the following rules on the Job Site: (1) Anyone found in possession of a firearm will be directed to leave immediately and will not be allowed to return, (2) Possession, sale, or distribution of alcohol or illicit drugs is prohibited. Anyone under the influence of alcohol or illicit drugs will be directed to leave immediately, (3) Unity will certify that personnel on the Job Site have consented to submit to drug and alcohol screening and testing including pre-employment, for cause, periodic or random tests, and (4) Entry on the Job Site shall constitute consent to Inspection of an employee's person, vehicle, and personal effects by Unity, Mrs. Momenian, or other authority. Any employee who is found in violation of these Job Site rules or who refuses to permit Inspection shall be barred from the Job Site at the discretion of Unity or Mrs. Momenian.

C. Unity will ensure that personnel will be furnished and required to use safety equipment complying with OSHA standards, including hard hats, safety glasses with permanently attached side shields, body harnesses with shock cord lanyard, steel toe work boots, and appropriate protective equipment and clothing. Any employee who refuses to comply with OSHA standards shall be barred from the Job Site at the discretion of Unity or Mrs. Momenian.

D. Unity shall pay not less than the wage scale of the various classes of labor as shown in a prevailing wage schedule provided by Mrs. Momenian. Wage rates on this schedule are minimum rates only and do not include fringe benefits such as health, welfare and pension contributions, and travel allowances. Unity and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and trade classification of all workers employed in connection with the Work and showing the actual per diem wage paid to each worker. Pay records shall be open at all reasonable hours for Inspection by Mrs. Momenian. Unity and every Subcontractor and Sub-subcontractor shall keep posted on the construction Site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates.

E. Unity will allow only qualified, careful and skilled personnel to do the Work. Each worker shall have the appropriate license, certification or experience necessary to complete the tasks assigned.

F. Unity shall discharge from employment on the Momenian Remodel Project any worker who cannot or will not meet standards for acceptable performance or who fails to comply with reasonable expectations for personal conduct.

G. Any worker employed on the Momenian Remodel Project by Unity or by any Subcontractor who, in the opinion of Mrs. Momenian, is not careful and competent, does not perform Work in a proper and skillful manner, or is disrespectful, intemperate, disorderly, or neglects or refuses to comply with directions given, or who abuses drugs or alcohol, possesses contraband, harasses or is belligerent toward other employees shall, at the written request of Mrs. Momenian, be discharged from the Momenian

Remodel Project by Unity or Subcontractor and shall not be employed again in any portion of the Work without written consent of Mrs. Momenian. Should Unity or a Subcontractor continue to or again employ anyone on the Momenian Remodel Project subject to a request under this paragraph, Mrs. Momenian may suspend Work until the request for discharge is honored. Any issue or circumstance relating to or resulting out of this paragraph shall not be construed or interpreted as interference with the responsibility of Unity to determine the means, methods, techniques, sequences and procedures required to complete the Momenian Remodel Project as described in the Contract Documents.

XIV. Emergency Response

A. In any Emergency threatening the health, safety or life of persons or serious and immediate damage to property, Unity shall use best efforts and full discretion without special instruction or authorization from Mrs. Momenian to prevent the threatened damage, injury or loss. When directed by any authority, Unity shall provide Emergency assistance without special instruction or authorization from Mrs. Momenian. However, Unity shall notify Mrs. Momenian promptly if Unity believes any significant changes in the Work or variations from Contract Documents have been caused by the Emergency response.

B. Provided Unity is not responsible for the Emergency condition and provided the additional cost to Unity for the Emergency response is not covered by insurance or recoverable from others, Unity shall be granted a Change Order to compensate for the Emergency response.

XV. Owner's Responsibilities

A. Mrs. Momenian will respond in writing and with reasonable promptness to written requests from Unity for information relevant to completion of the Work. Mrs. Momenian will identify a Representative qualified to respond to questions from Unity when Mrs. Momenian is not available. Unity is authorized to rely on written responses from Mrs. Momenian and the identified Representative.

B. Mrs. Momenian affirms that Mrs. Momenian has the right to enter into this agreement and has the right to contract for construction of the Momenian Remodel Project on the Job Site. Mrs. Momenian shall pay all taxes and assessments due on the Job Site during the period of construction and shall take all reasonable actions required to protect marketable title to the Job Site.

C. Mrs. Momenian will not interfere with or permit others to interfere with, stop, hinder, or delay completion of the Work by Unity or Subcontractors except as provided under this agreement.

D. All materials to be furnished by Mrs. Momenian under the Contract Documents shall be on hand and available at the location specified, when required in the normal course of construction. Unity makes no warrant that materials Furnished by Mrs. Momenian are suitable for use in the Momenian Remodel Project and may reject such materials if Installation would materially increase the cost of construction or substantially delay completion of the Momenian Remodel Project.

XVI. Representations by Contractor

A. The Contract Price is based on Unity's careful evaluation of Plans, Specifications, Contract Documents, local conditions, including availability of labor, material, equipment, and transportation, the kind and character of soil and terrain, all available reports and tests on soil conditions, Work to be performed by Mrs. Momenian or Separate Contractors, environmental and historic preservation considerations, applicable Code Requirements, climatic conditions, and other local conditions that may affect cost to Unity or duration of construction.

B. Unity shall use skill and attention to complete the Work in a timely manner consistent with the Contract Documents.

C. Based on a thorough evaluation of the Contract Documents, the Job Site, and all conditions that may affect construction cost and duration, Unity affirms that the Contract Price and Contract Time are fair and reasonable for completion of the Momenian Remodel Project.

D. Mrs. Momenian has reported to Unity all conditions known to Mrs. Momenian which may not be apparent to Unity and which might significantly increase cost of the Work or delay completion. These concealed conditions include, but are not limited to, hazards on the Job Site, unsuitable soil conditions, prior Defective Work of others, latent Defects in the Plans or Specifications, earlier attempts to do Similar or related Work, and obligations imposed by government.

E. Unity affirms that the company is financially solvent, licensed, experienced, competent, and has resources necessary to complete the Work in compliance with the Contract Documents.

F. Unity affirms that all Subcontractors will be financially solvent, licensed, experienced, competent, and will have resources necessary to complete the Work assigned in compliance with the Contract Documents.

XVII. Disclaimer by Owner, Reliance by Contractor

A. Unity acknowledges that information offered by Mrs. Momenian on subsurface or concealed conditions or structures at the Job Site represent only the opinion of Mrs. Momenian based on limited knowledge and understanding and is not part of the contract. Mrs. Momenian disclaims the accuracy of information provided to Unity.

XVIII. Discrepancy Between Plans and Field Conditions

A. Unity shall compare conditions at the Job Site with representations and Requirements in the Contract Documents. If Unity discovers a discrepancy between Job Site conditions and representations or Requirements in the Contract Documents, Unity shall promptly report the discrepancy to Mrs. Momenian, and provide a detailed explanation.

B. If any concealed structure, water, power, waste, drain or gas line is uncovered or revealed during construction which is not as indicated in the Contract Documents or is inconsistent with information provided by Mrs. Momenian, Unity shall promptly, and before any such structure or line is disturbed or damaged (except in an Emergency), notify Mrs. Momenian. Unity shall submit a Claim for a Change Order which covers the additional cost incurred as a result of such structure, water, power, waste, drain, or gas line uncovered or revealed during construction.

XIX. Access to Site by Owner

A. While Work is in preparation or in progress, Unity shall, at all times, provide access to the Job Site to Mrs. Momenian and those authorized by Mrs. Momenian. Unity shall provide safe and proper facilities for such access. Mrs. Momenian and those authorized by Mrs. Momenian shall have the right to inspect all Work done and all materials, equipment and fixtures furnished, installed, or stored in and about the Job Site.

B. If Mrs. Momenian or anyone authorized by Mrs. Momenian is on the Job Site while Work is in preparation or progress and causes a delay or disruption of the Work or does damage to the Work, for which Unity is in no way responsible, Unity shall be entitled to extra compensation or an extension of time, or both.

XX. Use of the Site

A. Unity shall confine operations at the Job Site to the area allowed by Law, regulation, and permits. In no case shall the operations of Unity extend beyond the minimum area required to complete the Work.

Unity shall not store on-site excess materials or equipment. Unity shall not use the Job Site as a staging, assembly, or storage area for other projects or for any purpose other than completing the Work.

XXI. Payment Plan

A. Mrs. Momenian will pay to Mr. Jamalreza the Contract Price in installments consisting of an initial payment, progress payments, and a final payment on completion of the Work.

XXII. Initial Payment

A. On 5/1/2016, Mrs. Momenian shall pay to Mr. Jamalreza \$25,000.00 as an advance on the Contract Price. At the start of work at the property, Ms. Momenian shall pay to Mr. Jamalreza \$15,000 towards the Contract price. The balance remaining at the start of work shall be \$8760.

XXIII. Progress Payments

A. Schedule of Progress Payments

1. Progress payment to be made after approximately 2/3rd of the job is completed, but prior to final walkthrough.

B. Processing of Progress Payments

1. No less than 2 calendar days before each progress payment is due under the terms of this contract, Unity shall provide Mrs. Momenian with an application for payment (invoice) in a form which complies with generally accepted trade practice.

2. Except as provided otherwise in this agreement, Mrs. Momenian shall pay the amount due within 2 calendar days after approval of any application for initial, progress or final payment.

3. \$5,000 due after approximately 2/3rds of project completion.

XXIV. Final Payment

A. Final payment of \$3,760 due upon final walkthrough. If punch list items are created, Mrs. Momenian is able to withhold up to \$1,500 of final payment until punch list is completed. In the instance of any outstanding Punch List items, withheld punch list allowance becomes Final Payment, and balance of \$3,760 becomes progress payment.

B. Making of final payment constitutes waiver of all Claims by Mrs. Momenian against Unity except those Claims previously made in writing and delivered to Unity and those obligations otherwise provided by this agreement or by operation of Law.

C. The acceptance of final payment by Unity constitutes a complete and unconditional waiver and release of any and all Claims by Unity of whatever nature, and regardless of whether they are then known or unknown, and a complete and unconditional release of Mrs. Momenian, and every person for whom Mrs. Momenian is responsible, for any and all matters related to the contract or otherwise, except those Claims which have been made in writing and identified by Unity as not having been settled at that time.

D. Application for final payment constitutes affirmation by Unity that all payrolls, bills for materials, equipment charges, and other obligations of Unity in connection with the Work have been paid or otherwise satisfied.

E. If completion of the Work is delayed unreasonably at no fault of Unity, Unity shall be entitled to final payment for all Work completed without prejudice to the right of Unity to complete the Momenian Remodel Project at a later date and without prejudice to the right of Mrs. Momenian to make Claims against Unity for Defects in Work completed.

XXV. Changes in the Work

- A. Except as provided elsewhere in this agreement, no change to this contract (including modification, clarification, interpretation or correction of the Plans or Specifications) shall be made without mutual agreement and a written Change Order signed by Unity and Mrs. Momenian identifying the change, the cost of the change, and the effect on Project schedule, if any.
- B. The price adjustment for Extra Work or reduced Work required by a Change Order shall be the difference in cost to Unity for material, labor (including actual medical, pension and vacation expense), Subcontract expense, equipment cost, supervision, taxes, insurance and overhead plus a reasonable profit. Profit and overhead (including Job Site overhead, off-site overhead and overhead caused by delay) shall be 25 percent of the cost of Work performed by crews of Unity and 15 percent for Work performed by any Subcontractor. No deduction for overhead and profit shall be made on a Change Order which results in a net credit to Mrs. Momenian.
- C. If any Change Order increases or decreases the time required for completion, Mrs. Momenian and Unity shall make an appropriate adjustment in the Contract Completion Date.
- D. Unity may delay acting on any written or oral direction, instruction, interpretation, or determination of Mrs. Momenian which would constitute Extra Work and may assert the right to an amendment to this contract by written Change Order before proceeding.
- E. Unity is authorized to make minor changes in the Work which are in the interest of Mrs. Momenian, do not materially alter the quality or performance of the Work, and do not affect the cost or time of performance, and comply with applicable Laws, codes, ordinances and regulations. Unity will inform Mrs. Momenian of each minor change made in the Work.
- F. When a change in the Work has been proposed by Mrs. Momenian, Unity shall halt Work in the area of the proposed change and take steps to minimize any loss or waste which might result from implementing the proposed change.
- G. When signed by Unity and Mrs. Momenian, each Change Order becomes a Contract Document. Any Change Orders requiring additional fees paid to Unity shall be paid within 2 business days of signing the Change Order.
- H. Acceptance by Unity of payment for a Change Order shall constitute a waiver by Unity of all other Claims by Unity based on Work described in the Change Order.

XXVI. Cooperation of the Parties

- A. Both Unity and Mrs. Momenian pledge that their relations will be conducted with courtesy and consideration in an environment characterized by mutual respect. Mrs. Momenian pledges to respond promptly to requests by Unity for guidance, assistance and payments when due and agrees to extend to Unity the deference and latitude a dedicated professional deserves. Unity pledges to commit the skill and resources required to complete the Momenian Remodel Project in a manner that complies with both the letter and spirit of the Contract Documents and enhances the reputation of Unity for dependability and professionalism.

XXVII. Defective Work

A. General Requirements

1. Unity stands behind the quality of our work. Any concerns about defective workmanship should be elevated to Unity's attention immediately, so we can resolve whatever concerns there are promptly.

B. Rejected Work - Contractor's Obligations

1. Unity shall bear all expenses related to the correction of rejected Work and replacing rejected materials, including the expense of making good all Work of Unity, Mrs. Momenian and Separate Contractors destroyed or damaged by the corrections and replacements.
2. The value of rejected Work and rejected materials shall not be included in any application for payment by Unity or, if previously included, shall be deducted from the next application for payment submitted by Unity.
3. At the request of Mrs. Momenian, Unity shall search for the cause of a construction Defect.

C. Rejected Work - Contractor's Rights

1. If Unity disagrees with a decision on rejection of Work or rejection of materials, Unity may proceed with corrections under protest and invoke the provisions of this agreement which cover dispute resolution. If such rejection of Work or materials is found to be without merit or with no adequate foundation, Unity shall be entitled to a Change Order for Extra Work and Mrs. Momenian shall pay all costs associated with corrections completed under protest.
2. Mrs. Momenian may elect to execute a Change Order accepting Work which is not in compliance with the Contract Documents rather than requiring removal and correction by Unity.
3. Mrs. Momenian acknowledges and agrees that it may be inappropriate or unreasonably expensive to replace, refabricate or refinish building components with minor Defects or which are damaged slightly due to wear and tear commonly associated with the construction process. Unity may, at the sole discretion of Unity, (1) Correct minor Defects using procedures commonly accepted as good construction practice, or (2) Conclude that a cosmetic Defect is acceptable under good construction practice and take no corrective action.

XXVIII. Contractor Claims

- A. Unity and Mrs. Momenian agree to make a good faith effort to resolve all Claims that arise under this agreement and shall seek the opinion of expert disinterested parties on the validity of Claims, when appropriate. Claims not resolved to the mutual satisfaction of Unity and Mrs. Momenian shall be resolved under the provisions of this agreement covering dispute resolution.

XXIX. Insurance

A. General Requirements

1. Unity shall carry workers' compensation insurance and public liability insurance as required by Law and regulation for the protection of Unity and Mrs. Momenian during progress of the Work.

XXX. Interpretation of the Contract

- A. The omission of words or phrases in the Contract Documents or obvious typographical errors in the Contract Documents shall not defeat interpretation of the Contract Documents so long as the meaning is reasonably inferable from the Contract Documents taken as a whole.
- B. Words and abbreviations defined in this contract are capitalized and should be understood as defined. Words commonly used in the construction industry are to be understood in their recognized technical or construction industry context. Any word not defined in this contract and which does not have a well-known technical or construction industry meaning is to be understood as defined in the most recent edition of the Merriam-Webster Collegiate Dictionary.
- C. Nothing in the Contract Documents shall be interpreted as requiring Unity to violate any Law or regulation imposed by government.

D. Words of any gender used in this contract shall be construed to include both genders. Words in the singular number shall be construed to include the plural, unless the context requires otherwise.

XXXI. Rights of Third Parties

A. Except as expressly provided elsewhere in this agreement, Contract Documents shall not be construed to create a contractual relationship of any kind: (1) Between Owner's Representative and Unity, (2) Between Mrs. Momenian and any Subcontractor or Sub-subcontractor, (3) Between Mrs. Momenian and any consultant to Mrs. Momenian, or (4) Between any persons or entities other than Mrs. Momenian and Unity.

XXXII. Dealing With Plan Defects

A. Unless Unity has asked for and received a written clarification from Mrs. Momenian in time to prevent delay in the Work, any omission or ambiguity in the Contract Documents shall be interpreted as requiring the material or construction technique necessary to produce the greater quantity and better quality of Work.

B. If inconsistent, approved changes to the Contract Documents take precedence over the original Contract Documents. Subsequent changes to the Contract Documents take precedence over prior changes to the Contract Documents.

C. Pending clarification by Mrs. Momenian, Unity shall perform no Work on any portion of the Momenian Remodel Project requiring an interpretation of the Contract Documents. Unity has no liability for Work done before discovering the need for interpretation so long as that Work was done in good faith reliance on one of the Contract Documents.

XXXIII. Assignment of the Contract

A. Except as otherwise provided in this agreement, Unity shall not assign this contract or sublet it as a whole without the written consent of Mrs. Momenian.

XXXIV. Choice of Law

A. The contract shall be governed by the Law of the State of Virginia.

XXXV. Entire Agreement

A. The Contract Documents are the entire agreement and constitute a complete integration of all understandings between Unity and Mrs. Momenian on the subject of the Momenian Remodel Project. The Contract Documents supersede all prior negotiations, representations and agreements, whether written or oral. No subsequent notation, renewal, addition, deletion, change or amendment to this contract shall have any force or effect unless in the form of a written Change Order or amendment to this contract.

XXXVI. Independent Contractor

A. Unity shall perform all obligations required by this agreement as an independent contractor and not as an employee of Mrs. Momenian. No agent, employee or Subcontractor of Unity shall accrue leave, pension, insurance, or any other benefit provided to employees of Mrs. Momenian.

B. Neither Unity nor any employee of Unity shall act as an agent, representative or employee of Mrs. Momenian. Unity shall have no authorization, express or implied, to bind Mrs. Momenian to any agreement, liability, or understanding, except as expressly provided in this contract.

C. Nothing in this agreement shall be construed to create any partnership, joint venture, or other association between Mrs. Momenian and Unity.

D. It is expressly agreed and understood that this is a nonpersonal services contract under which professional services rendered by Unity are rendered as an independent contractor.

XXXVII. Severability

A. If any provision of this contract is interpreted or rendered invalid and unenforceable, then the remainder of this contract shall remain in full force and effect.

XXXVIII. Right to Stop Work for Non-Payment

A. After giving reasonable notice, Unity shall have the right to suspend the Work under this contract if any payment not in dispute for Work completed, including payment for Extra Work, is not received by Unity as provided in this agreement. Once the Work is suspended, Unity may keep the Momenian Remodel Project idle until all payments due have been received by Unity.

XXXIX. Substantial Completion

A. When, in the opinion of Unity, the Work is Substantially Complete, Unity shall prepare a preliminary Punch List of Work remaining to be done and deliver that Punch List to Mrs. Momenian with a request for evaluation of Substantial Completion. If, in the opinion of Mrs. Momenian, items on the preliminary Punch List are consistent with Substantial Completion, Mrs. Momenian shall conduct an Inspection of the Work to evaluate compliance with the Contract Documents.

B. Before Mrs. Momenian takes possession or occupancy of the Momenian Remodel Project, Unity shall receive a comprehensive Punch List of discrepancies to be corrected or Work to be finished by Unity and a date for completing this Work. Unity shall complete and correct items on the Punch List by the designated date.

C. After Substantial Completion, Unity shall remain responsible for: (1) Damage caused by Unity while completing the Work, and (2) Safety of crews when completing the Work.

D. After Substantial Completion, Unity shall enter the Job Site only for the purpose of completing or correcting items on the Punch List or for the purpose of doing call-back or warranty Work when requested by Mrs. Momenian.

E. Upon Substantial Completion of the Momenian Remodel Project, Unity shall promptly remove from the Job Site all barricades, construction tools, equipment and supplies, and all temporary structures used during construction.

Statement Required by Title 18 Virginia Administrative Code Section 50-22-260

- (1) This contract includes an estimated date when work will begin and the estimated completion date.
- (2) This contract shows the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment.
- (3) If the work involved requires a construction permit, final payment under this contract is not required until final approval is obtained from the building official's office.
- (4) This contract lists the work to be performed and the materials required.
- (5) Events beyond the control of Unity may delay completion of the work. Delay caused by these events do not constitute abandonment of the work and may delay dates set for payment.
- (6) Unity will comply with all local requirements for permits, inspections, and zoning;
- (7) Both Virginia Code Annotated § 59.1-21.1 to § 59.1-21.7.1 and 12 Code of Federal Regulations § 226.15 give Mrs. Momenian the right to cancel this contract until midnight of the third business day after the day this agreement is signed. In compliance with Virginia Code Annotated § 59.1-21.4(2)(b)(ii), cancellation forms made part of this agreement meet the requirements of Federal law.
- (8) The full name, address and license or registration number of Unity appear in this contract.

Expiration date of this license or registration is 12/31/2017

The class of this license or registration is A

(9) Any modification to this contract which changes the cost, materials, work to be performed or estimated completion date will be in writing and will be signed by both Unity and Mrs. Momenian.

(10) This contract includes a signed acknowledgment that Mrs. Momenian has read the Statement of Consumer Protection provided by the Virginia Board for Contractors.

(11) Anyone awarded a civil court judgment against a licensed contractor for improper or dishonest conduct may be eligible to recover up to \$10,000 from the Contractor Transaction Recovery Fund. To find out more about this fund, contact: Contractor Transaction Recovery Fund Section, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, (804) 367-1559.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION STATEMENT OF CONSUMER PROTECTIONS

THIS CONSUMER INFORMATION SHEET IS PROVIDED THROUGH THE BOARD FOR CONTRACTORS AND MAY BE REPRODUCED BUT NOT ALTERED

If you are about to engage the services of a contractor in the Commonwealth of Virginia, you should be aware of the state's program for the regulation of this occupation by licensing or certifying these businesses. Any contractor who undertakes a project the total value of which is \$120,000 or more is required to have a valid Class A license issued by the Board for Contractors. Any contractor who undertakes a project the total value of which is over \$10,000 but less than \$120,000 must have a valid Class B license. A licensed contractor has met standards established by the Board for Contractors to ensure that the licensee possesses the character, knowledge, and skills necessary to practice without harm to the public. Any contractor who undertakes a project the total value of which is more than \$1,000 but no more than \$10,000 is required to have a valid Class C license. Class C licensure requires that the contractor submit information to the Board for Contractors concerning the location, nature, and operation of the business, as well as evidence of experience and information on the applicant's credit history. Before signing any contract, you should ask to see the license or the pocket card issued with the license number and check to be sure that it has not expired and that the contractor is working within the limits of his licensure. The authority of the Board for Contractors to discipline the licensed contractors is limited to specific violations of the law and/or regulations of the board, such as written citations from the local Building Inspectors for violations of the Virginia Uniform Statewide Building Code or practices which constitute abandonment, gross negligence, continued incompetence, or misconduct in the practice of the profession. In such cases disciplinary action by the board is limited to fines and/or remedial education, revocation or suspension of the contractor's license and placing the licensee on probation. Such action can only be taken after a hearing or with the consent of the license holder and his agreement to waive his right to a hearing.

The board does not have the authority to order a license holder to make restitution to you for losses you may have incurred due to the contractor's poor performance; efforts to recover such funds must be made through the civil courts. If you are planning to take such action against the contractor, you should contact the Board for Contractors Adjudication Section at (804) 367-1559 in order to receive information about the Virginia Contractors Transaction Recovery Fund and the procedures for applying to recover from the fund if you are unable to collect after judgment is awarded in court. Issues involving cosmetic defects in workmanship must be resolved by negotiation between you and your contractor or civil action to enforce the terms of your contract if necessary. **You should be careful in reviewing the contract before signing it in order to be sure that the terms of the agreement are clear and acceptable to you.** You should know that the Board for Contractors recommends that the initial down payment is no more than 10% or \$1,000, whichever is less, unless the job requires custom made items, where the initial down payment

it in order to be sure that the terms of the agreement are clear and acceptable to you. You should know that the Board for Contractors recommends that the initial down payment is no more than 10% or \$1,000, whichever is less, unless the job requires custom made items, where the initial down payment should be no more than 30% of the total value of the contract and that, if you are dissatisfied with the work performed by the sub-contractors, you may hold the general contractor responsible. Finally, remember that, in accordance with the Virginia Home Solicitation Sales Act (Code of Virginia, Section 59.1-21.1 et seq.), you have a three-day right to cancel a contract which you have negotiated in your home. (For more precise information about the application of this law, see the Code of Virginia or seek legal advice.) Should you have reason to believe that your contractor may not have complied with the rules and regulations of the Board for Contractors, you should notify the Department of Professional and Occupational Regulation by calling (804) 367-8504 or write to the following address: Department of Professional and Occupational Regulation, Compliance and Investigations Division, The Perimeter Center Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233. The aforementioned information is not intended to be an exhaustive list of the remedies available to you through your local government or other agencies. If you need additional assistance, call the Office of the Attorney General, Consumer Protection Section at (800) 552-9963 or (804) 786-2042, or write to the following address: Office of the Attorney General of Virginia, Consumer Protection Section, 900 East Main Street, Richmond, Virginia 23219.

Acknowledged by Mrs. Momenian _____

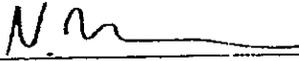


Signatures

The signatures that follow constitute confirmation by those signing that they have examined and understand the Contract Documents and agree to be bound by the terms of these documents.

This agreement is entered into as of the date written below.

Nahid Momenian, Owner

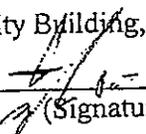


(Signature)

5/16/2016

(Date)

Unity Building, LLC, Contractor



(Signature)

5/16/2016

(Date)

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Documents Submitted By The Owner

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Invoice

Unity Building, LLC
 CBC/RBC Lic#2705159302
 P.O. Box 134
 Great Falls, Virginia 20166
 Office Phone: (703) 935-9782
 Mobile Phone: (703) 935-9782
 unitybuildingllc@gmail.com

Invoice Number: I160501139
Invoice Date: 05/01/2016
Payment Terms: Due On Receipt
Invoice Amount: 48,760.00
Created By: Pooya Jamalreza

Bill To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Ship To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1245	Home Remodel Contract Inclusive contract reflecting price considerations for on-site work efficiencies to include: Kitchen remodel and partial re-build, Master Bedroom Closet remodel, and Hardwood Floor Refinishing. Specs detailed below.	1.00	46,000.00	X	46,000.00
1246	Kitchen Remodel Includes remodel of existing kitchen area to include: removal and disposal of existing cabinetry, countertop, sink, and faucet; inspection of bulkheads and duct work to attempt to move venting and/or HVAC duct work to open areas fully to ceiling; removal and replacement of existing appliances; installation of customer-approved cabinetry in existing cabinet space as well as new cabinetry to replace pantry; partial removal of wall between kitchen and dining space to create a counter- to bar-height eating area (34"-42" depending on customer specs); installation of LED lighting in kitchen area, installation of customer selected countertop; installation of new sink & faucet; installation of crown molding. Unity to provide all cabinetry, countertops, LED lighting, crown molding, sink, faucet, and cabinetry handles. Includes installation of customer-selected backsplash throughout existing kitchen layout. Kitchen installation will use all existing appliances.	1.00	0.00		0.00
1247	Kitchen Flooring Replacement Unity to remove and dispose of 2 layers of hardwood flooring in kitchen. Unity to stabilize/screw down kitchen flooring as need to eliminate noise/vibrations for new installation. Unity to replace existing flooring with customer-approved ceramic tile, including durock, thinset and grout. Includes takeup and removal of existing flooring and installation of new ceramic flooring.	1.00	0.00		0.00

1248	Dining Room Cabinetry Customer to be provided with wall-to-wall built-in dining room base cabinetry of her choosing. Cabinetry to be fewer than 22" in depth (current furniture in room), and raised up on legs to allow venting beneath cabinetry. Countertop to be customer-selected surface.	1.00	0.00	0.00
1249	Flooring Sand & Finish Upon or close to completion of kitchen remodel work, flooring in family room, living room, and dining room to be sanded down and refinished to even out discolorations. Includes removal and return of furniture for these areas.	1.00	0.00	0.00
1250	Master Bedroom Closet Includes removal of existing closet cabinetry and installation of new, closet organization system. Allowances to be made for storage of shoes, dresses, full length pants, shirts, etc as currently in closet storage. Access to attic panel will be retained, and venting will not be blocked.	1.00	0.00	0.00

Subtotal: \$ 46,000.00
 VA Sales Tax Rate: 6%
 VA Sales Tax Amount: 2,760.00
 Invoice Amount \$ 48,760.00
 Cash on 05/01/2016: (7,000.00)
 Cash on 05/01/2016: (4,000.00)
 Cash on 05/07/2016: (10,000.00)
 Cash on 05/08/2016: (4,000.00)
Invoice Balance: \$ 23,760.00


 Customer Signature 05/01/2016

Invoice

Paid

Unity Building, LLC
CBC/RBC Lic#2705159302
P.O. Box 134
Great Falls, Virginia 20166
Office Phone: (703) 935-9782
Mobile Phone: (703) 935-9782
unitybuildingllc@gmail.com

Invoice Number: I160718156
Invoice Date: 07/18/2016
Payment Terms: Due On Receipt
Invoice Amount: 3,140.14
Created By: Pooya Jamalreza

Bill To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Ship To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1334	Entry Door With Sidelights Custom order entry door plus delights.	1.00	1,069.00	X	1,069.00
1335	Door Installation Installation of front entry door with skylights.	1.00	1,800.00	X	1,800.00
1336	Shipping Charge	1.00	99.00		99.00

Comment:

Any change to product selection may result in charges due to pricing differentials on different types of material, as well as return/restocking fee. Invoices to be paid with 2 weeks of presentation & customer approval to avoid 20% late payment charge each week payment is delayed.

Subtotal: \$ 2,968.00
VA Sales Tax Rate: 6%
VA Sales Tax Amount: 172.14
Invoice Amount \$ 3,140.14
Cash on 07/26/2016: (1,800.00)
Cash on 07/29/2016: (1,340.14)
Invoice Balance: \$ 0.00


Customer Signature 07/22/2016

Invoice

Paid

Unity Building, LLC
CBC/RBC Lic#2705159302
P.O. Box 134
Great Falls, Virginia 20166
Office Phone: (703) 935-9782
Mobile Phone: (703) 935-9782
unitybuildingllc@gmail.com

Invoice Number: I160714155
Invoice Date: 07/14/2016
Payment Terms: Due On Receipt
Invoice Amount: 4,742.15
Created By: Pooya Jamalreza

Bill To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Ship To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1066	Floor Repair Stabilization including extra layering plywood, glue & nail down.	1.00	650.00	X	650.00
1323	Foyer Tile Charge Foyer marble tile purchase	110.00	17.30	X	1,903.00
1324	Foyer Marble Installation Installation charge for marble flooring.	1.00	1,200.00	X	1,200.00
1325	Tile Restocking Fee	2.00	150.00	X	300.00
1326	Tile Transportation Fee Return 2 loads tile, delivery 3rd tile. No charge as per customer request.	2.00	0.00	X	0.00
1337	Foyer Decorative Inserts -- Materials Only Decorative tile accents to be installed between marble tiles.	1.00	170.73	X	170.73
1339	Marble Foyer Tile Freight Fee	1.00	250.00	X	250.00

Comment:

Any change to product selection may result in charges due to pricing differentials on different types of material, as well as return/restocking fee. Invoices to be paid with 2 weeks of presentation & customer approval to avoid 20% late payment charge each week payment is delayed.

Subtotal: \$ 4,473.73
VA Sales Tax Rate: 6%
VA Sales Tax Amount: 268.42
Invoice Amount \$ 4,742.15
Cash on 07/29/2016: (4,742.15)
Invoice Balance: \$ 0.00


Customer Signature 07/22/2016

Invoice

Unity Building, LLC
CBC/RBC Lic#2705159302
P.O. Box 134
Great Falls, Virginia 20166
Office Phone: (703) 935-9782
Mobile Phone: (703) 935-9782
unitybuildingllc@gmail.com

Invoice Number: I160719157
Invoice Date: 07/18/2016
Payment Terms: Due On Receipt
Invoice Amount: 6,890.00
Created By: Pooya Jamalreza

Bill To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Ship To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1332	Fireplace Rebuild Removal of brick facing, installation of stacked tile refacing.	1.00	5,000.00	X	5,000.00
1371	Additional Wall Tile Purchase Credit returned - Invoice I60802160	1.00	1,500.00	X	1,500.00

Comment:

Cost includes installation of quartz surface for floor area in front of fireplace. Any change to surface selection may result in charges due to pricing differentials on different types of material. In addition, customer must use same surface material as is used in dining room to avoid incurring any additional charges, so that one slab may be used for both applications. Invoices to be paid with 2 weeks of presentation & customer approval to avoid 20% late payment charge each week payment is delayed.

Subtotal: \$ 6,500.00
VA Sales Tax Rate: 6%
VA Sales Tax Amount: 390.00
Invoice Amount \$ 6,890.00


Customer Signature 07/22/2016

Invoice

Unity Building, LLC
 CBC/RBC Lic#2705159302
 P.O. Box 134
 Great Falls, Virginia 20166
 Office Phone: (703) 935-9782
 Mobile Phone: (703) 935-9782
 unitybuildingllc@gmail.com

Invoice Number: I160720158
Invoice Date: 07/20/2016
Payment Terms: Due On Receipt
Invoice Amount: 7,500.56
Created By: Pooya Jamalreza

Bill To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Ship To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1355	Tiling Dining Room Wall	1.00	1,100.00	X	1,100.00
1341	Tile Material Purchase Customer exchanged original dining room wall tile purchase for different style tile. This exchange also includes installation of tile on stair risers on both stair cases.	120.00	49.80	X	5,976.00

Comment:

Any change to product selection may result in charges due to pricing differentials on different types of material, as well as return/restocking fee. Invoices to be paid with 2 weeks of presentation to avoid 20% late payment charge each week payment is delayed.

Subtotal: \$ 7,076.00
 VA Sales Tax Rate: 6%
 VA Sales Tax Amount: 424.56
 Invoice Amount \$ 7,500.56


 Customer Signature 07/22/2016

Documents Submitted By Fairfax County

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County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

February 21, 2018

Subject: Appeal of Unity Building, LLC

Address of Violations: 902 McMillen Court
Great Falls, Virginia 22066

To: Technical Review Board

Fairfax County has documented and cited Unity Building, LLC, for the following violations under the Virginia Uniform Statewide Building Code/Virginia Residential Code 2012 edition. We are requesting that the Board uphold the decision of the Local Board of Building Code Appeals, and affirm the validity of the code violations listed below.

Violation Number 1; The NOV includes a violation pursuant to Section 108.1 “when applications are required”. The contractor was required to obtain permits for performing electrical work and for making structural changes to the dwelling. The electrical work included multiple rooms with new recessed lighting and new NM wires that were run throughout the main level (see pic 16, 17, 18, 19, 20). Receptacles (missing) were included in the listed violation because there are locations where there should have been a box and receptacle installed (see pic 8, 10, 12, 13, 21, 22, 23, 24, 25). The structural changes included removal of nonbearing (between the kitchen and dining room, between the living room and foyer) and bearing walls and installation of a new beam expanding the opening between the dining room and living room. In addition, the contractor opened the foyer floor exposing notched and termite damaged floor joists. The existing floor system had individual strips of plywood installed between the joists (not on top) which were not installed appropriately. (see pic 1, 1A, 1B, 3, 4, 7, 8, 9, 10, 11) Concealing this damaged floor system created several additional violations which are addressed below.

Violation 2; Section 113.3 “Minimum Inspection”. The code requires that any newly run electrical wiring, lights, or structural work be inspected and approved prior to concealment. There is concealed wiring in the ceiling and walls and a beam and framing has been installed behind new sheetrock.

Violation 3; Section R501.2 “Floors” Requirements: Floors are required to be able to support all loads imposed on them. The floor system that was exposed during demolition (and then concealed without addressing the necessary repairs) has substantial damage from being notched (along most its length) as well as from termite damage. Until a PE can design a repair or until the joists are sistered (doubled up), the floor system should not have been concealed. (See pic #3, 4) In addition, the second story floor system has also been compromised due to the newly installed header which is not sized to carry the loads imposed. The house is 28’ in width. The maximum span of (2) 2X10 header is 6’1” and the new span is 9’. (see pics 7, 8, 9, 10, 11)

Violation Number 4; Section R502.8.1 "Sawn Lumber": The floor joists have been notched beyond $1/6^{\text{th}}$ of their depth along most of the length of the members, this far exceeds $1/3^{\text{rd}}$ the depth and is located in the middle third of the span. The contractor stated that he added multiple layers of $3/4"$ plywood to bring the floor back to the original level. This added additional dead weight to the already compromised floor prior to installing the tile/marble floor covering. (see pic 1, 3, 4, 5, 16)

Violation Number 5; Section R601.2 Wall Construction Requirements: The wall that was removed had a header opening that was much smaller than the new wall. The "unpermitted" header is now supporting much more weight. The new "unpermitted" header must be sized to accommodate the imposed loads. The unpermitted header is undersized (should be (4) 2X12's). Also, there are no bearing blocks installed in the floor system below that would transfer the loads to a beam or foundation capable of carrying the imposed loads. (see pic 7, 8, 9, 10, 11)

Violation Number 6; Section E3404.3 Circuit Characteristics: The electrical wiring has had the grounding conductors cut off at the termination and connection points. The grounding path has not been maintained. The contractor hardwired a transformer outside of a box and connected that device to an ungrounded branch circuit. (see Pic 21, 22, 23, 24, 25)

Sincerely,



Scott Hagerty
Fairfax County Code Development and Compliance Investigator

Nonbearing header removed

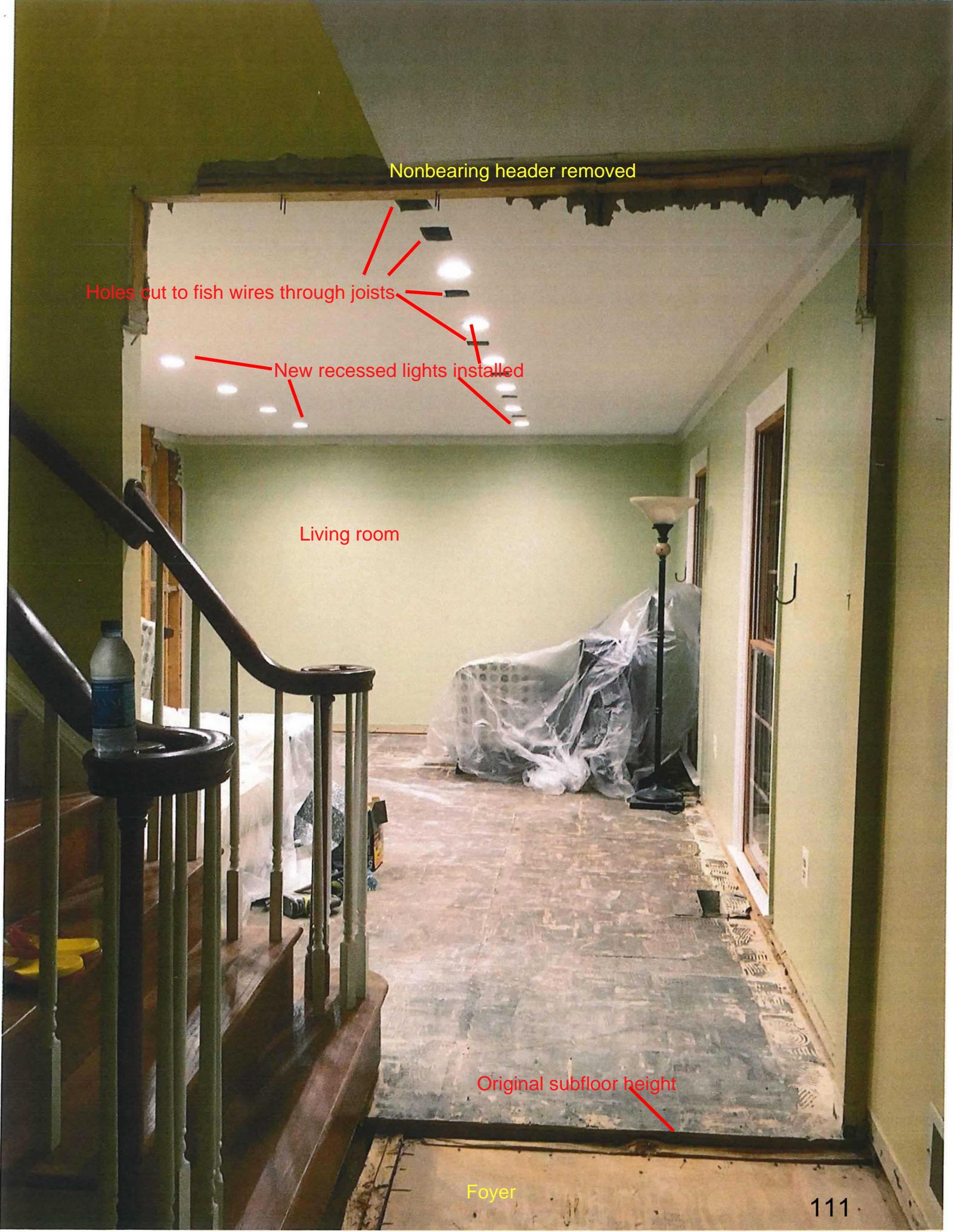
Holes cut to fish wires through joists

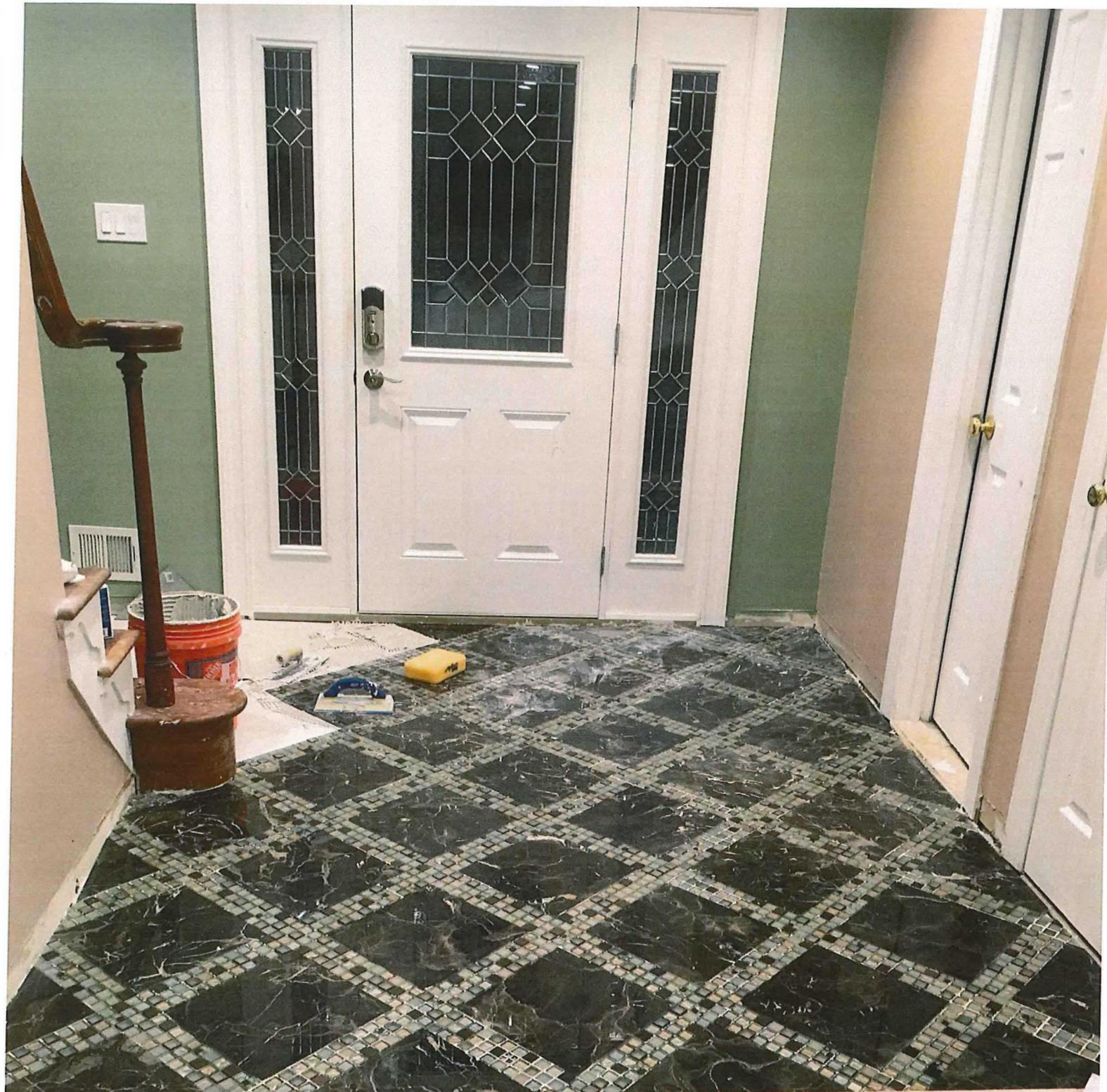
New recessed lights installed

Living room

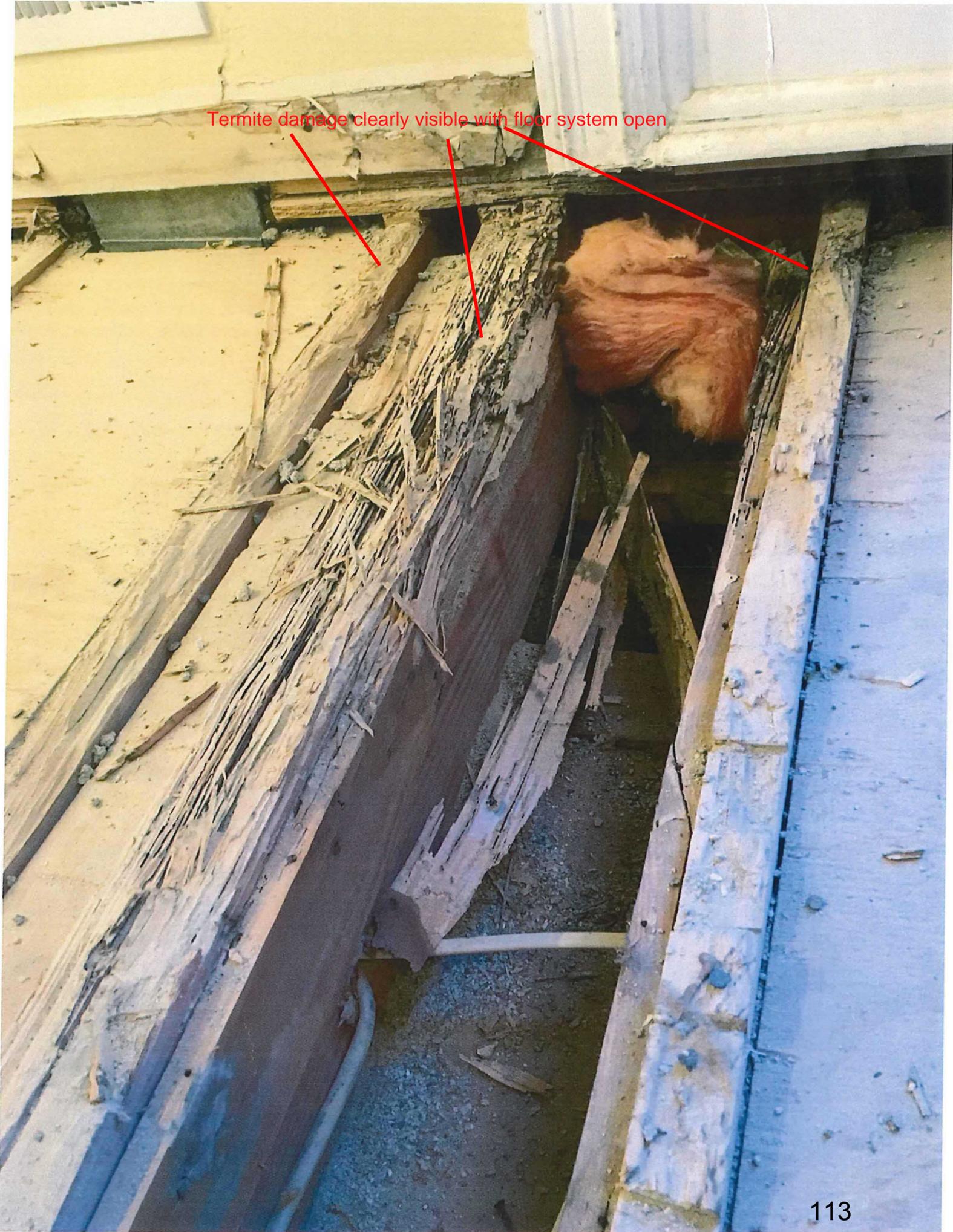
Original subfloor height

Foyer





Termite damage clearly visible with floor system open

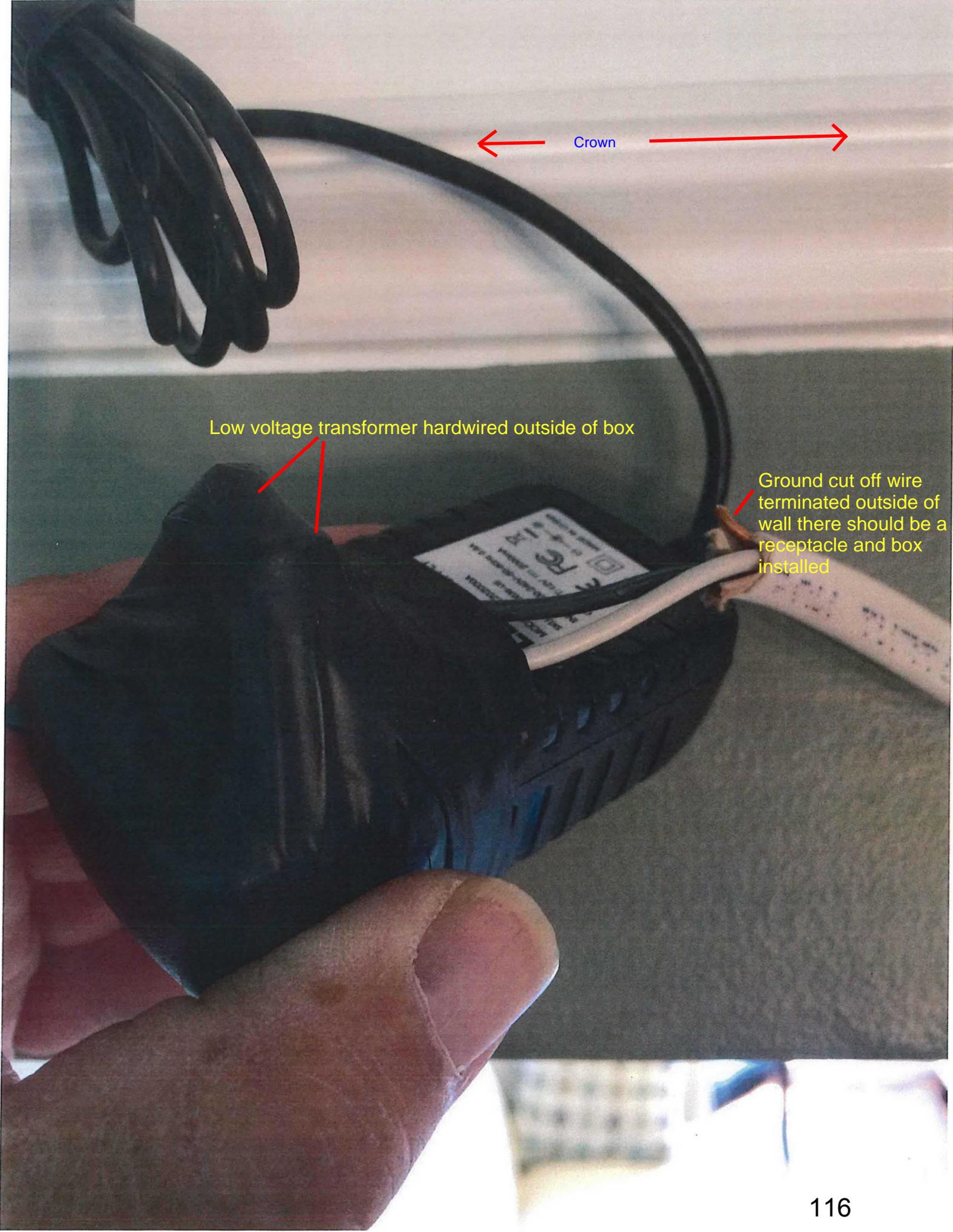




Manufactured date

14485

21 FEB 2016 23:25



← Crown →

Low voltage transformer hardwired outside of box

Ground cut off wire terminated outside of wall there should be a receptacle and box installed

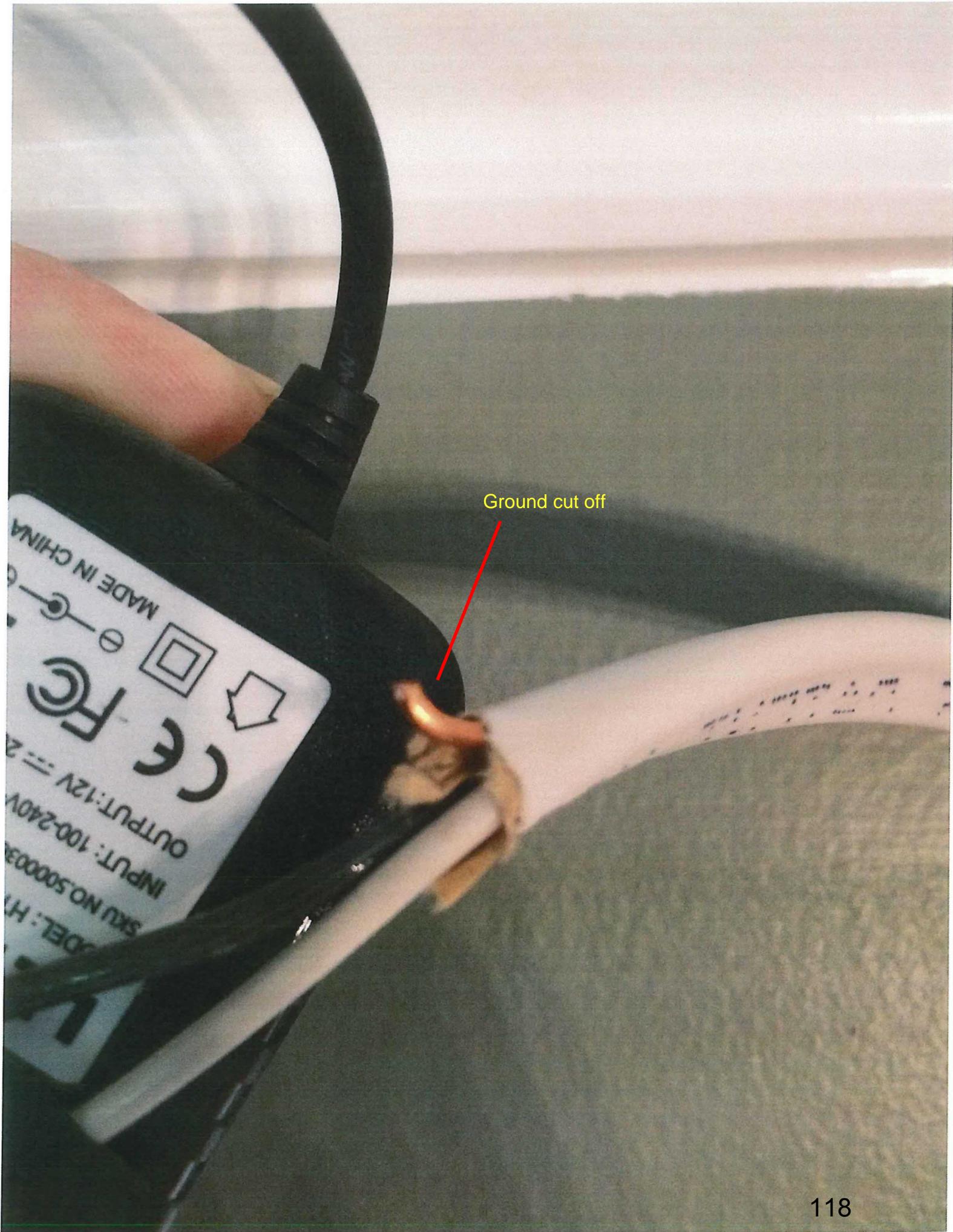


Nonbearing wall removed

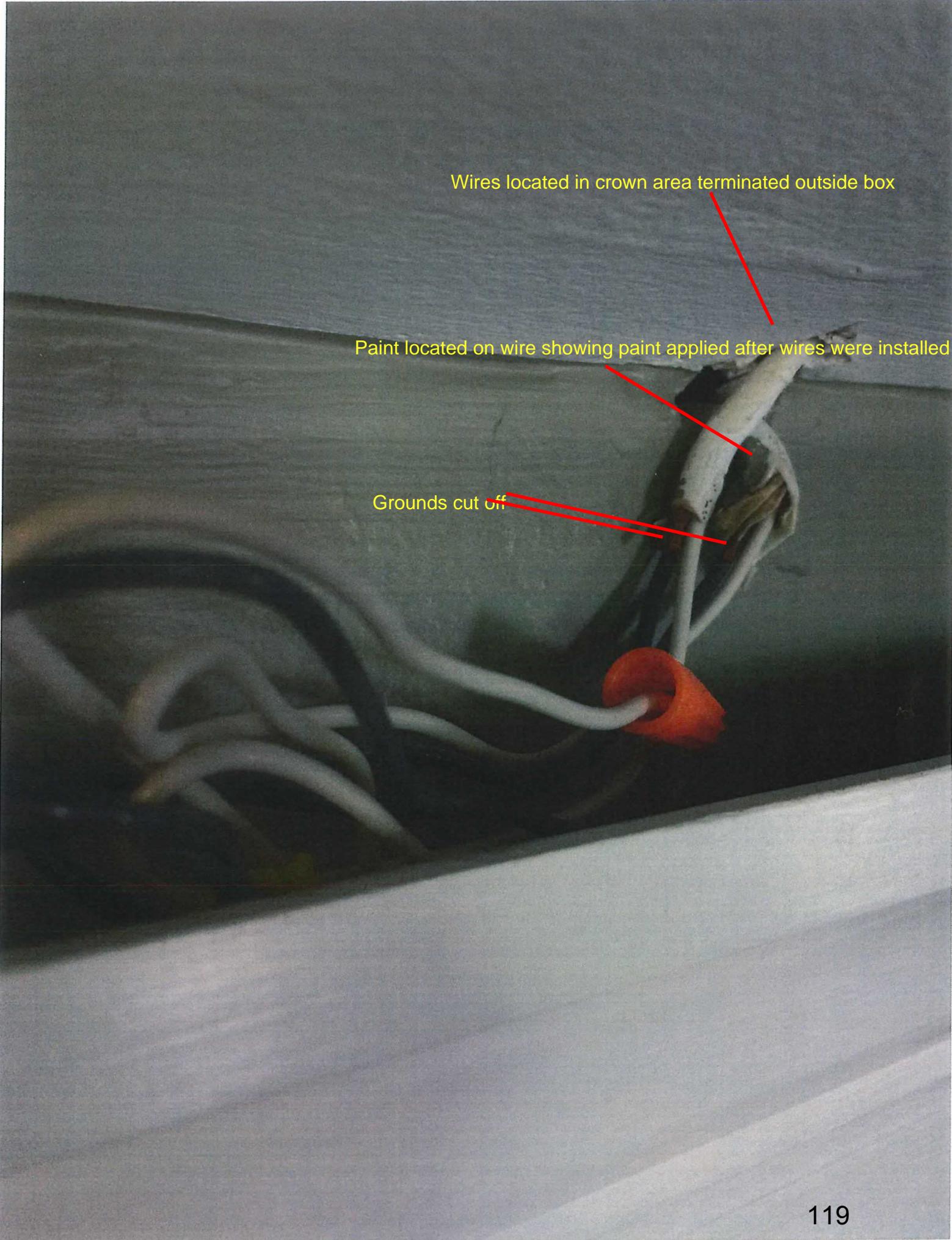
New header opening

No cabinets in place at this time and location

Electrical wire from old wall



Ground cut off



Wires located in crown area terminated outside box

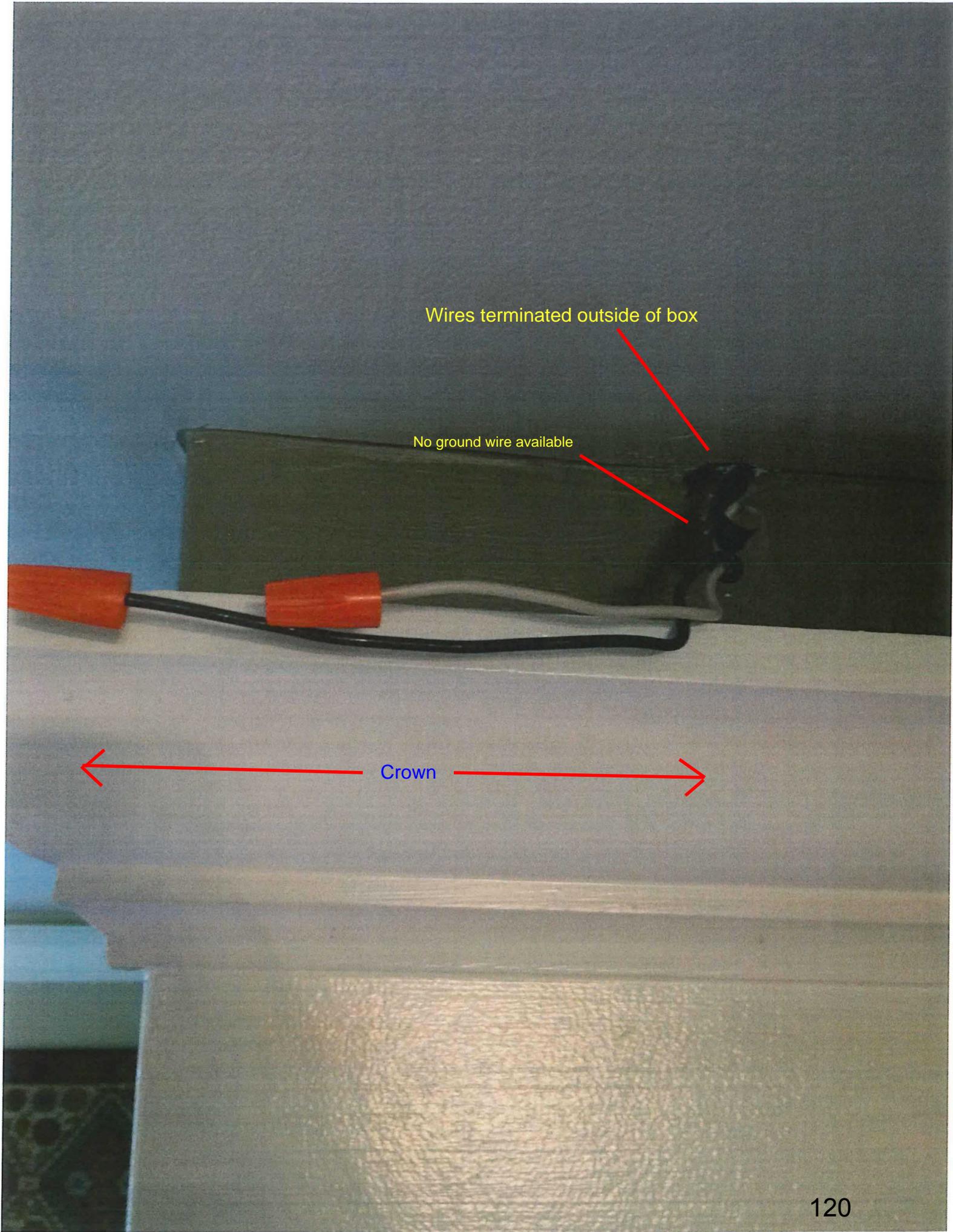
Paint located on wire showing paint applied after wires were installed

Grounds cut off

Wires terminated outside of box

No ground wire available

Crown



Recessed lights after holes have been patched in living room

New header opening

Dining Room

Living room

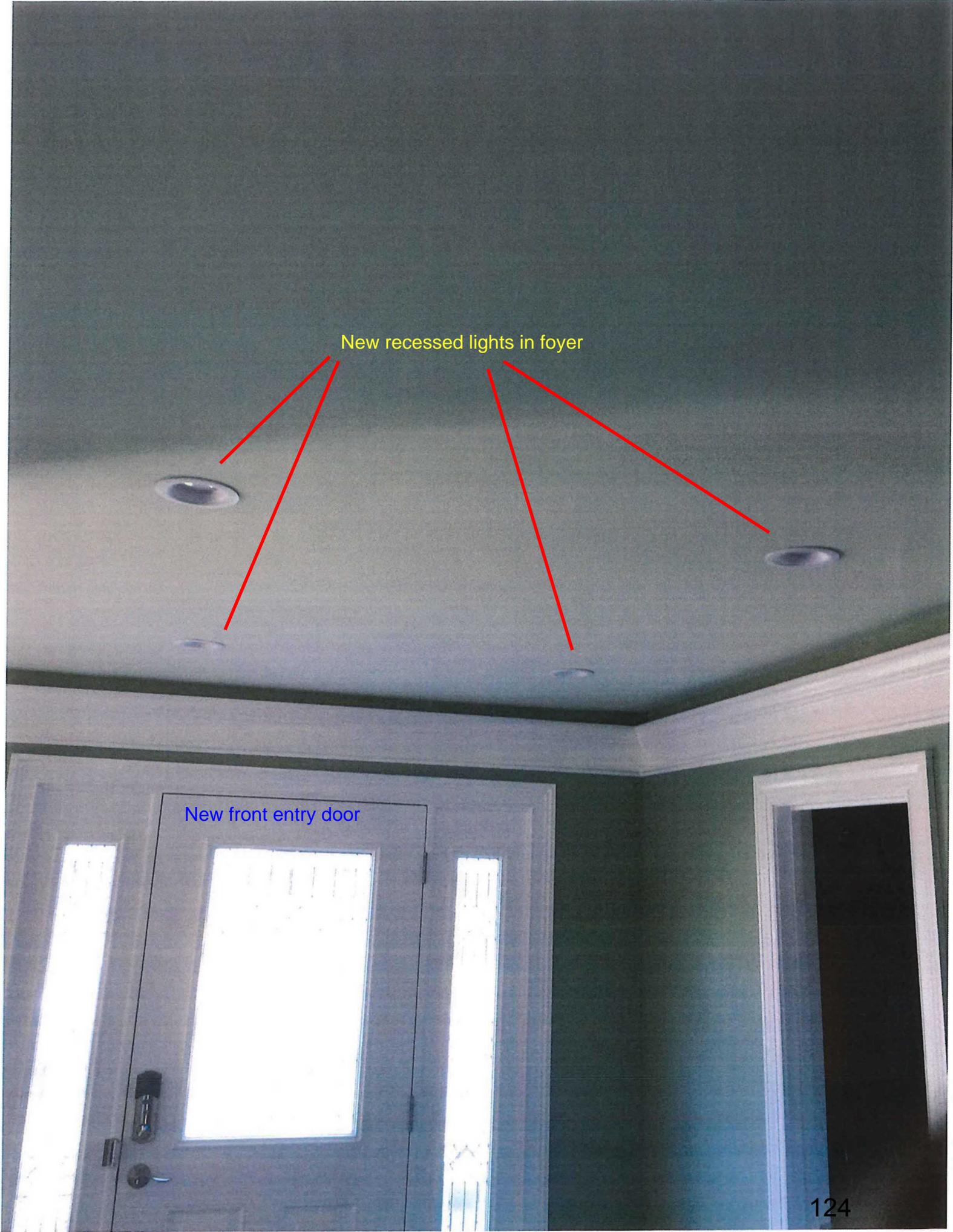
New recessed lights in family room

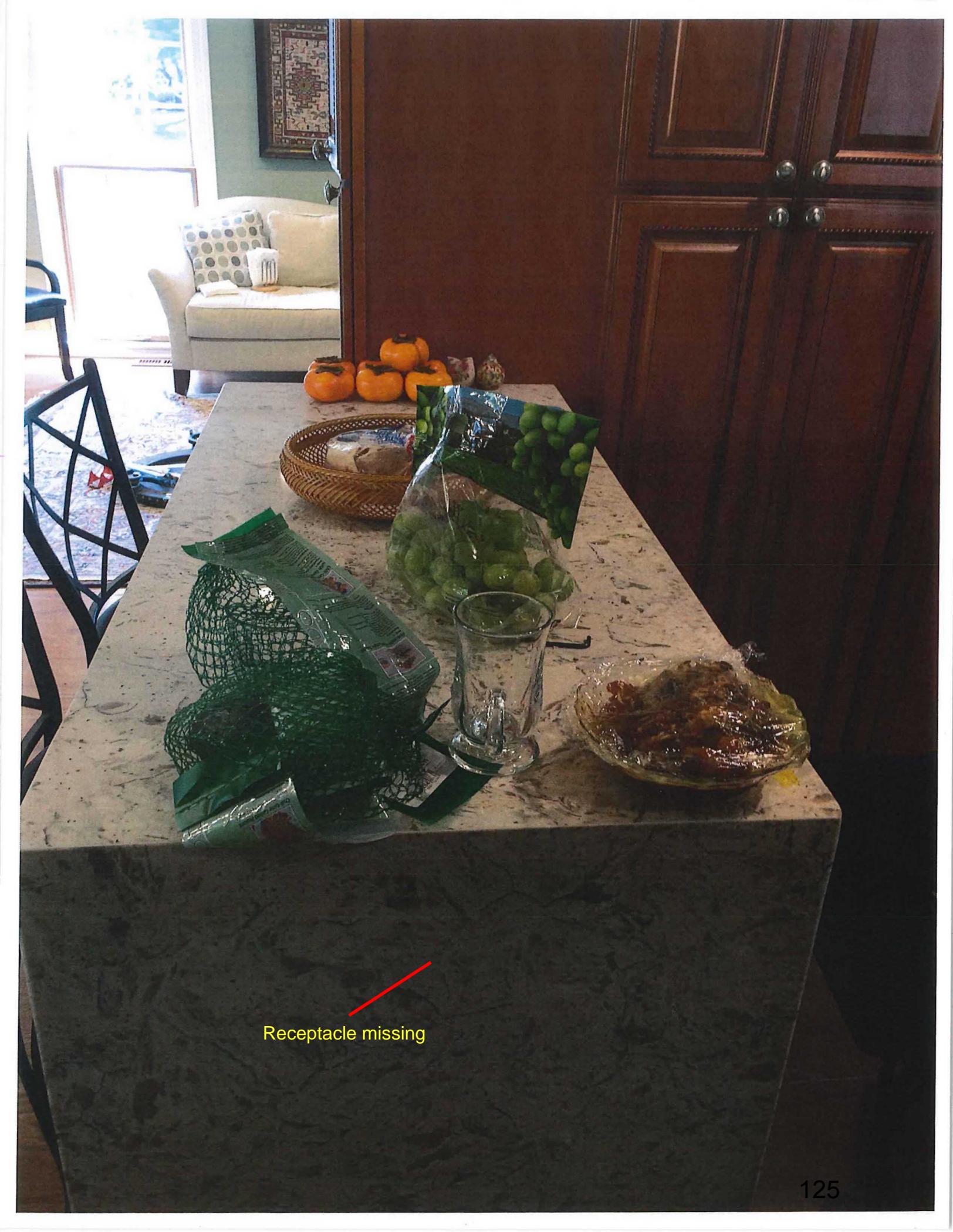
More recessed lights in family room



New recessed lights in foyer

New front entry door





Receptacle missing



Transformer hardwired outside of box in crown with no ground or receptacle installed



No countertop receptacles or minimum spacing along wall

Concealed receptacle located behind cabinets

Pooya Jamalreza
Unity Building LLC
PO Box 134
Great Falls, VA 22066
unitybuildingllc@gmail.com

Invoice

Paid

Invoice Number: I160714155
Invoice Date: 07/14/2016
Payment Terms: Due On Receipt
Invoice Amount: 4,742.15
Created By: Pooya Jamalreza

Bill To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Ship To
Nahid Momenian
902 McMillen Ct
Great Falls, VA 22066

Contract contains floor damage repair
paid for by homeowner

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1322	Foyer Joist Repair Repair of foyer joist and termite damage.	1.00	650.00	X	650.00
1323	Foyer Tile Charge Foyer marble tile purchase	110.00	17.30	X	1,903.00
1324	Foyer Marble Installation Installation charge for marble flooring.	1.00	1,200.00	X	1,200.00
1325	Tile Restocking Fee	2.00	150.00	X	300.00
1326	Tile Transportation Fee Return 2 loads tile, delivery 3rd tile. No charge as per customer request.	2.00	0.00	X	0.00
1337	Foyer Decorative Inserts -- Materials Only Decorative tile accents to be installed between marble tiles.	1.00	170.73	X	170.73
1339	Marble Foyer Tile Freight Fee	1.00	250.00	X	250.00

Structural repairs require a permit

Comment:

Any change to product selection may result in charges due to pricing differentials on different types of material, as well as return/restocking fee. Invoices to be paid with 2 weeks of presentation & customer approval to avoid 20% late payment charge each week payment is delayed.

Subtotal: \$ 4,473.73
VA Sales Tax Rate: 6%
VA Sales Tax Amount: 268.42
Invoice Amount \$ 4,742.15
Cash on 07/29/2016: (4,742.15)
Invoice Balance: \$ 0.00


Customer Signature 07/22/2016



Finished foyer over compromised floor joists

See finished floor height

Living room

New opening between living and dining room with overspanned header work concealed without approved plans, permits, or inspections

Dining room

Wall with no receptacles

Receptacle concealed behind cabinets

New point load

New header opening

living room

Dining room

new point load



Pooya Jamalreza
 Unity Building LLC
 PO Box 134
 Great Falls, VA 22066
 unitybuildingllc@gmail.com

Invoice

Invoice Number: I160501139
 Invoice Date: 05/01/2016
 Payment Terms: Due On Receipt
 Invoice Amount: 48,760.00
 Created By: Pooya Jamalreza

Bill To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Ship To
 Nahid Momenian
 902 McMillen Ct
 Great Falls, VA 22066

Item #	Item Name	Quantity	Unit Price	Taxable	Total
1245	Home Remodel Contract Inclusive contract reflecting price considerations for on-site work efficiencies to include: Kitchen remodel and partial re-build, Master Bedroom Closet remodel, and Hardwood Floor Refinishing. Specs detailed below.	1.00	46,000.00	X	46,000.00
1246	Kitchen Remodel Includes remodel of existing kitchen area to include: removal and disposal of existing cabinetry, countertop, sink, and faucet; inspection of bulkheads and duct work to attempt to move venting and/or HVAC duct work to open areas fully to ceiling; removal and replacement of existing appliances; installation of customer-approved cabinetry in existing cabinet space as well as new cabinetry to replace pantry; partial removal of wall between kitchen and dining space to create a counter- to bar-height eating area (34"-42" depending on customer specs); installation of LED lighting in kitchen area, installation of customer selected countertop; installation of new sink & faucet; installation of crown molding. Unity to provide all cabinetry, countertops, LED lighting, crown molding, sink, faucet, and cabinetry handles. Includes installation of customer-selected backsplash throughout existing kitchen layout. Kitchen installation will use all existing appliances.	1.00	0.00		0.00
1247	Kitchen Flooring Replacement Unity to remove and dispose of 2 layers of hardwood flooring in kitchen. Unity to stabilize/screw down kitchen flooring as need to eliminate noise/vibrations for new installation. Unity to replace existing flooring	1.00	0.00		0.00

This is the nonbearing wall removal between the Kitchen and dining room

	with customer-approved ceramic tile, including durock, thinset and grout. Includes takeup and removal of existing flooring and installation of new ceramic flooring.				
1248	Dining Room Cabinetry Customer to be provided with wall-to-wall built-in dining room base cabinetry of her choosing. Cabinetry to be fewer than 22" in depth (current furniture in room), and raised up on legs to allow venting beneath cabinetry. Countertop to be customer-selected surface.	1.00	0.00		0.00
1249	Flooring Sand & Finish Upon or close to completion of kitchen remodel work, flooring in family room, living room, and dining room to be sanded down and refinished to even out discolorations. Includes removal and return of furniture for these areas.	1.00	0.00		0.00
1250	Master Bedroom Closet Includes removal of existing closet cabinetry and installation of new, closet organization system. Allowances to be made for storage of shoes, dresses, full length pants, shirts, etc as currently in closet storage. Access to attic panel will be retained, and venting will not be blocked.	1.00	0.00		0.00

Subtotal: \$ 46,000.00
 VA Sales Tax Rate: 6%
 VA Sales Tax Amount: 2,760.00
 Invoice Amount \$ 48,760.00
 Cash on 05/01/2016: (7,000.00)
 Cash on 05/01/2016: (4,000.00)
 Cash on 05/07/2016: (10,000.00)
 Cash on 05/08/2016: (4,000.00)
Invoice Balance: \$ 23,760.00


 Customer Signature 05/01/2016

Recessed lighting and wiring required permit

Repair to foyer floor required permit

Wall removal required permit

Invoice	Contents	Total	Balance Due
160713153	Lighting, outlets, electrical	\$9,000.00	\$0, Paid Thank you for your payment
160701152	Main level flooring	\$18,900.00	\$0, Paid Thank you for your payment
160714155	Foyer damage repair	\$4,742.15	\$0, Paid Thank you for your payment
160718156	Entry door	\$3,140.14	\$0, Paid Thank you for your payment
160714154	Wall removal, repair, painting, crown molding	\$20,405.00	\$11,487.29 Thank you for your partial payment
160701151	Kitchen contract	\$51,553.00	\$22,453.00 Thank you for your partial payment
160719157	Fireplace Rebuild & Tile Purchase – \$1,500 Tile credited Inv. 160802160	\$6,890.00	\$6,890.00
160720158	Dining room wall tiling	\$7,500.56	\$7,500.56
160802160	New Invoice, finishing stairs, wood TV wall, upstairs bathrooms, tile only	\$6,102.06	\$6,102.06
		Total Balance	\$54,432.91
	Amount paid as of August 12, 2016	-\$30,000	
	Amount paid August 25, 2016	-\$5,000	
	NEW CHANGE ORDERS		
160809161	Change Order – Extra Kitchen Cabinetry & Stone	\$5,724.00	
160820164	Change Order - Kitchen Backsplash	\$1,653.60	
160825166	Change Order – Upstairs Crown & damages	\$3,707.33	
		Total incl. Change Orders 8/25/2016	\$30,517.84

Nahid Momenian has paid \$30,000 cash down payment on the balance as of August 12, 2016. Initial payment of \$10,000 to be paid by August 31, 2016. Second payment of \$10,000 to be paid by September 31, 2016. Remaining balance to be paid on a monthly basis in the amount

August 25, 2016

Unity Building, LLC

Original Contract: \$48,760.00

CO #	Pd Date	Content	Amount	Terms
1	7/1/2016	a) Add 30 cabinet section (microwave wall cabinet, upper wall cabinet, base cabinet, cabinet crown, backsplash, countertop) b) Upgrade cabinets to 36" size (height) c) Add crown moulding to match cabinetry	4,050.00	
2 Y	7/1/2016	a) Remove parquet & hardwood layers in main level b) Install prefinished 4" Hardwood flooring c) Replace foyer ceramic with new ceramic d) Upgrade hardwood to 5" unfinished, with custom on-site finishing e) Install basement walkout & remodel basement	17,907.00	Cancelled
3 Y	7/13/2016	a) Install LED recessed lighting b) Replace kitchen lighting c) Replace basement lighting d) Replace wall outlets e) Replace 5 wall switches with dimmer switches f) Add remote control switch g) Replace wall switches with Decora style switches	8,478.72	Installing electrical lights and wiring requires a permit
4	7/14/2016	a) Modify wall openings main level b) Install new crown moulding main level c) Install new baseboard main level d) Add LED lighting to crown moulding e) Add drywall to kitchen wall for extra thickness f) Paint foyer, living room, family room, kitchen & upstairs ceilings g) Replace disposal with new disposal	19,250.00	Pay within 2 weeks; 20% per week penalty Change in wall opening requires a permit Adding lighting and wiring to crown mould requires a permit
5 Y	7/14/2016	a) Foyer ceramic tile was returned, customer selected alternate tile b) Alternate tile returned, customer selected marble foyer tile c) Upgrade straight instalation to diagonal d) Add single row decorative inserts to foyer layout e) Includes return transportation & restocking fees f) Install stack-stone tile on living room wall	4,473.73	Pay within 2 weeks; 20% per week penalty Changed
6 Y	7/18/2016	Replace existing entry door	2,968.00	Pay within 2 weeks; 20% per week penalty
7	7/18/2016	Cover façade of fireplace with new tile	6,500.00	Pay within 2 weeks; 20% per week penalty

		Customer purchased "overage" tile to be used at later date		
8	7/20/2016	a) Upgrade dining room wall to decorative tile b) Change selectd dining room wall tile to more expensive glass tile c) Add tile to risers of main level staircase d) Add tile to risers of basement staircase	7,076.00	Pay within 2 weeks; 20% per week penalty
9	7/20/2016	a) Add 2 more strips of decorative tile to foyer installation b) Sand & finish main level stair treads c) Sand & finish basement stair treads d) Replace wood balusters with iron main level stairs e) Replace stair post & rails f) Add decorative wood wall tile to living room - Change from stack stone to wood g) Replace upstairs toilet h) Replace upstairs bathroom flooring	5,671.75	Pay within 2 weeks; 20% per week penalty <i>Change previous CO</i> <i>Cancelled</i>
10	8/9/2016	a) Add another tall pantry kitchen cabinetry b) Purchase wall cabinets for customer designed peninsula c) Lower living room crown moulding location d) Add countertop for new peninsula	5,400.00	Pay within 2 weeks; 20% per week penalty
11	8/20/2016	Replace originally selected stacked stone kitchen backsplash with glass tile	1,560.00	Pay within 2 weeks; 20% per week penalty
12	8/25/2016	a) Add crown moulding to upstairs b) Additional decorative accents to main level stair railing/balusters c) Mount TV in living room d) Add lock to garage door e) Add security lock to garage door f) Add security lock to front door g) Add security lock to back door h) Add moulding to wood wall i) Change color of LED lights main level crown moulding j) Move crown in main level back to original installation location	3,488.99	Pay within 2 weeks; 20% per week penalty

Additional Documents
and Written Arguments
Submitted by The Owner

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Luter, William <travis.luter@dhcd.virginia.gov>

Re: Appeal of Unity Building LLC to the Review Board Appeal No. 17-12

nahidhm@aol.com <nahidhm@aol.com>

Fri, Apr 27, 2018 at 9:02 PM

To: travis.luter@dhcd.virginia.gov, Amy.Smarr@fairfaxcounty.gov

Cc: Paul.Emerick@fairfaxcounty.gov, Jeff.Brown@dhcd.virginia.gov

Hi all!

I just want to bring your attention to Mr. Jamalreza's signature on all documents. They all have been added afterwards. On my last phone call conversation with him I asked for all the paper works in details, and he refused to give me any. Mr. Jamalreza clearly stated that all the papers he gave me so far has no value, and he suggested to me to trash them all.

Is this legal?

I appreciate your patient on my case.

Best regards

Nahid Momenian

-----Original Message-----

From: Luter, William <travis.luter@dhcd.virginia.gov>

To: nahidhm <nahidhm@aol.com>; jgpc <jgpc@verizon.net>; Melissa' <Amy.Smarr@fairfaxcounty.gov>

Cc: Paul' <Paul.Emerick@fairfaxcounty.gov>; Brown, Jeff (DHCD) (DHCD) <Jeff.Brown@dhcd.virginia.gov>

Sent: Fri, Apr 27, 2018 4:06 pm

Subject: Appeal of Unity Building LLC to the Review Board Appeal No. 17-12

Parties and Counsel:

Attached are two documents created by Review Board staff for the above referenced appeal. The first is the Review Board staff summary which is done for the benefit of the parties and the Review Board members in accordance with established policy for the above-referenced appeal. The second document is the record of the appeal containing what is suggested to be given to the Review Board members along with the staff summary.

You may submit additions, corrections or objections to the staff summary, additional documents, and written arguments to be included with the information going to the Review Board members for the appeal. They must be received on or before Friday, May 25, 2018 to be included in the board package.

The appeal hearing before the Review Board is scheduled for June 15, 2018. We will be sending out a notice of hearing and excerpts from the Review Board's agenda package with all information for this appeal to you prior to the hearing as well as additional information about the meeting.

Should you have any questions or concerns, please do not hesitate to contact me.

W. Travis Luter Sr., C.B.C.O.

Assistant Secretary to the State Building Code Technical Review Board

Senior Construction Inspector II

Department of Housing & Community Development

Division of Building & Fire Regulation

State Building Codes Office

600 East Main Street, Suite 300

Richmond, Virginia 23219

(804) 371-7163 - phone

(804) 371-7092 - fax



Luter, William <travis.luter@dhcd.virginia.gov>

Fwd: Message from "RNP002673BC4C48"

nahidhm@aol.com <nahidhm@aol.com>

Fri, Apr 27, 2018 at 9:26 PM

To: melissa.smarr@fairfaxcounty.gov, scott.hagerty@fairfaxcounty.gov, travis.luter@dhcd.virginia.gov, Jeff.Brown@dhcd.virginia.gov

Hi!

This is the original contract that it was given to me by Mr. Jamalreza in the biggning of the remodeling. I believe he forged my signature on the contract that he represented to the board. The dates are different and it is typed in. How come i singed but the date is typed in?

Mr. Jamalreza forged my signature using my credit card.

Best regads

Nahid Momenian

-----Original Message-----

From: david <david@msgf1.com>

To: nahidhm <nahidhm@aol.com>

Sent: Wed, Apr 25, 2018 9:49 am

Subject: Message from "RNP002673BC4C48"

This E-mail was sent from "RNP002673BC4C48" (MP C401SR).

Scan Date: 04.25.2018 09:47:22 (-0400)

Queries to: david@msgf1.com

**20180425094722884.pdf**

906K

Construction Contract

This agreement is made by Unity Building, LLC (Contractor) and Nahid Momenian (Owner) on the date written beside our signatures.

Contractor

Unity Building, LLC
PO Box 134
Great Falls, Virginia 22066
Work Phone Number: 703-935-9949
Cell Phone Number: 703-935-9949
Email Address: unitybuildingllc@gmail.com
License Number: 2705159302
Unity's license is a Class A License.
Unity's license expires on 12/31/2017.
Unity Building, LLC is operating as a limited liability company in the state of Virginia.
Unity Building, LLC will be referred to as Unity throughout this agreement.

Owner

Nahid Momenian
902 McMillen Court
Great Falls, Virginia 22066
Day Phone Number: 703-585-4175
Cell Phone Number: 703-585-4175
Email Address: nahidm@aol.com
Nahid Momenian will be referred to as Mrs. Momenian throughout this agreement.

The Construction Site

902 McMillen Court
Great Falls, Virginia 22066

I. Project Description

A. For a price identified below, Unity agrees to complete for Mrs. Momenian the Work identified in this agreement as the Momenian Remodel Project.

II. Contract Price

A. In addition to any other charges specified in this agreement, Mrs. Momenian agrees to pay Unity \$48,760.00 for completing the Work described as the Momenian Remodel Project.

III. Scheduled Start of Construction

A. Work under this agreement will begin within 10 business days after the following contingencies have been met.

1. Complete Plans and Specifications have been approved and initialed by both Mrs. Momenian and Unity.

IV. Scheduled Completion of Construction

A. Work under this agreement will be Substantially Complete within 60 calendar days after the date

construction begins.

V. Documents Incorporated

A. This agreement incorporates by reference certain disclosures and notices required by federal and state law. The following documents are incorporated as though included in full as part of this agreement.

Notice of Right to Cancel under Regulation Z (in duplicate)

B. This agreement incorporates by reference certain documents which define and describe the Work to be done. The following documents are incorporated as though included in full as part of this agreement.

1. Plans

Plans dated 5/9/2016.

Consisting of 1 sheet(s).

Prepared by Katie Kaufman.

Last changed on 5/13/2016.

And further identified as Kitchen & Closet Layout Design.

2. Proposal (Estimate or Bid)

Proposal (Estimate or Bid) dated 5/1/2016.

Consisting of 2 sheet(s).

For the amount of \$46,000.00 plus sales tax as applicable.

Entitled Momenian Home Remodel.

Other Contract Documents notwithstanding, the proposal by Unity dated 5/1/2016 defines Work to be completed under this agreement. Anything not included in the proposal dated 5/1/2016 is not included in this agreement and is not part of the Work. Unity will be entitled to a Change Order and additional compensation for anything in any Plans or Specifications or anything required by Law or ordinance that is not identified in the proposal dated 5/1/2016.

VI. Ownership of Plans

A. Plans, Drawings, Specifications and copies prepared for use in construction under this agreement are the property of Unity. Unity retains all common Law and statutory rights to these Plans, Drawings and Specifications. Mrs. Momenian agrees that these documents will not be used on any other project and, with the exception of one record set to be retained by Mrs. Momenian, will be returned to Unity on request.

VII. Scope of Work

A. Unity shall supervise and direct the Work and accepts responsibility for construction means, methods, techniques, sequences and procedures required to complete the Momenian Remodel Project in compliance with the Contract Documents.

B. Except for materials expressly designated otherwise in the Contract Documents, Unity warrants that all materials and equipment furnished under this contract shall be of good quality and new.

C. Unity is responsible for coordination of the various trades and deliveries of equipment, materials and supplies to minimize interference which could delay the Work or pose a hazard to life or property. Unity shall be responsible for allocation of tasks between trades and will be the final authority on location and routing of equipment and storage of materials on the Job Site.

D. Unity shall make a best effort to adopt and implement policies and practices designed to minimize Work stoppages, slowdowns, disputes or strikes. Except as may be specifically provided elsewhere in

this or a separate agreement, Unity is not liable to Mrs. Momenian for damages suffered by Mrs. Momenian as a result of Work stoppages, slowdowns, disputes or strikes. Unity shall allocate labor tasks among the various trades in accordance with local custom, rules, jurisdictional awards, regulations, and decisions, regardless of any classification by the Contract Documents.

VIII. Cutting and Patching

A. Unity will ensure that cutting and patching required to make building parts fit together properly is done by those skilled in the trade. Work completed by Unity will have the neatly finished appearance characteristic of professional grade construction.

B. Unity will ensure that alteration Work done on existing building components does no damage either to the property of Mrs. Momenian or to Work done by others.

C. Except as illustrated on building Plans or described in Contract Documents, Unity will not alter existing building components without consent of Mrs. Momenian. Unity will not alter or interfere with the Work of any Separate Contractor without prior consent of the Separate Contractor involved.

IX. Job Site Safety

A. Unity will at all times take all reasonable precautions for the safety of employees and the public at the Job Site and will comply with all applicable safety Laws and regulations of federal, state, and local authorities (including building codes) and safety Requirements of Mrs. Momenian.

X. Protection of People and Property

A. Protection of Existing Work

1. Unity will erect and maintain during the construction period suitable dust-proof temporary partitions designed to protect the building contents and occupants against airborne dust and debris. Unity will ensure that air conditioning supply air inlets are covered to prevent contamination of the central air conditioning supply. When construction personnel are not on the Job Site, Unity shall provide temporary covers for doorways, roof, window sash, and other penetrations through the exterior wall.

B. Protection of New Work

1. Unity shall protect installed materials during the construction period so finished surfaces (such as plumbing fixtures, woodwork, trim, walls, floors, ceilings and counters) show no signs of damage or deterioration at the time of Substantial Completion. Except as otherwise provided in the Contract Documents, all Work shall be thoroughly cleaned and in a "like new" condition at the time of Substantial Completion. This includes dusting, window cleaning, floor cleaning, and removing grime and stains from finished surfaces.

2. During the period of construction, Unity will provide protection against the weather to prevent damage to building and materials from rain, wind, snow and ice.

XI. Compliance with Law

A. Unity and Mrs. Momenian mutually commit to use reasonable care to meet the Requirements of state, federal and local Law when discharging their responsibilities under this agreement.

B. Unity is licensed to do Work described in the Contract Documents. Unity will notify Mrs. Momenian of any change in that license status. Every Subcontractor working for Unity will hold a license appropriate for the Work performed.

C. Except as required by Law, Mrs. Momenian is not responsible for any breach of Law by Unity.

Except as required by Law, Unity is not responsible for any breach of Law by Mrs. Momenian.

XII. Job Cleanup

A. Unity shall regularly remove from the Job Site and storage areas all surplus material, waste and debris resulting from the Work. Construction debris shall be removed to a legal refuse collection site with disposal or recycling fees paid by Unity. At completion of the Work, Unity shall, in addition, remove from the Job Site all tools, equipment and scaffolding brought to the Job Site by Unity or Subcontractors. At Substantial Completion, exposed finishes of windows, doors, floors, walls, ceilings, fixtures and trim shall be cleaned and free of grime, stains, over spray, dirt and dust.

B. Unity shall provide a trash disposal facility on the Job Site for use by construction personnel. The on-site trash facility provided by Unity shall be of an appropriate size for the Project and placed in a location approved by Mrs. Momenian. All construction debris shall either be placed in the trash facility provided by Unity or hauled to a legal disposal site, at the discretion of Unity. When any trash container provided by Unity is full, contents shall be removed to a legal disposal facility at the expense of Unity.

XIII. Employee Relations

A. Unity is responsible for performance of all construction crews, including employees of Subcontractors, and shall enforce strict discipline and good order on the Job Site.

B. Unity will enforce the following rules on the Job Site: (1) Anyone found in possession of a firearm will be directed to leave immediately and will not be allowed to return, (2) Possession, sale, or distribution of alcohol or illicit drugs is prohibited. Anyone under the influence of alcohol or illicit drugs will be directed to leave immediately, (3) Unity will certify that personnel on the Job Site have consented to submit to drug and alcohol screening and testing including pre-employment, for cause, periodic or random tests, and (4) Entry on the Job Site shall constitute consent to Inspection of an employee's person, vehicle, and personal effects by Unity, Mrs. Momenian, or other authority. Any employee who is found in violation of these Job Site rules or who refuses to permit Inspection shall be barred from the Job Site at the discretion of Unity or Mrs. Momenian.

C. Unity will ensure that personnel will be furnished and required to use safety equipment complying with OSHA standards, including hard hats, safety glasses with permanently attached side shields, body harnesses with shock cord lanyard, steel toe work boots, and appropriate protective equipment and clothing. Any employee who refuses to comply with OSHA standards shall be barred from the Job Site at the discretion of Unity or Mrs. Momenian.

D. Unity shall pay not less than the wage scale of the various classes of labor as shown in a prevailing wage schedule provided by Mrs. Momenian. Wage rates on this schedule are minimum rates only and do not include fringe benefits such as health, welfare and pension contributions, and travel allowances. Unity and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and trade classification of all workers employed in connection with the Work and showing the actual per diem wage paid to each worker. Pay records shall be open at all reasonable hours for Inspection by Mrs. Momenian. Unity and every Subcontractor and Sub-subcontractor shall keep posted on the construction Site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates.

E. Unity will allow only qualified, careful and skilled personnel to do the Work. Each worker shall have the appropriate license, certification or experience necessary to complete the tasks assigned.

F. Unity shall discharge from employment on the Momenian Remodel Project any worker who cannot or will not meet standards for acceptable performance or who fails to comply with reasonable expectations for personal conduct.

G. Any worker employed on the Momenian Remodel Project by Unity or by any Subcontractor who, in the opinion of Mrs. Momenian, is not careful and competent, does not perform Work in a proper and skillful manner, or is disrespectful, intemperate, disorderly, or neglects or refuses to comply with directions given, or who abuses drugs or alcohol, possesses contraband, harasses or is belligerent toward other employees shall, at the written request of Mrs. Momenian, be discharged from the Momenian Remodel Project by Unity or Subcontractor and shall not be employed again in any portion of the Work without written consent of Mrs. Momenian. Should Unity or a Subcontractor continue to or again employ anyone on the Momenian Remodel Project subject to a request under this paragraph, Mrs. Momenian may suspend Work until the request for discharge is honored. Any issue or circumstance relating to or resulting out of this paragraph shall not be construed or interpreted as interference with the responsibility of Unity to determine the means, methods, techniques, sequences and procedures required to complete the Momenian Remodel Project as described in the Contract Documents.

XIV. Emergency Response

A. In any Emergency threatening the health, safety or life of persons or serious and immediate damage to property, Unity shall use best efforts and full discretion without special instruction or authorization from Mrs. Momenian to prevent the threatened damage, injury or loss. When directed by any authority, Unity shall provide Emergency assistance without special instruction or authorization from Mrs. Momenian. However, Unity shall notify Mrs. Momenian promptly if Unity believes any significant changes in the Work or variations from Contract Documents have been caused by the Emergency response.

B. Provided Unity is not responsible for the Emergency condition and provided the additional cost to Unity for the Emergency response is not covered by insurance or recoverable from others, Unity shall be granted a Change Order to compensate for the Emergency response.

XV. Owner's Responsibilities

A. Mrs. Momenian will respond in writing and with reasonable promptness to written requests from Unity for information relevant to completion of the Work. Mrs. Momenian will identify a Representative qualified to respond to questions from Unity when Mrs. Momenian is not available. Unity is authorized to rely on written responses from Mrs. Momenian and the identified Representative.

B. Mrs. Momenian affirms that Mrs. Momenian has the right to enter into this agreement and has the right to contract for construction of the Momenian Remodel Project on the Job Site. Mrs. Momenian shall pay all taxes and assessments due on the Job Site during the period of construction and shall take all reasonable actions required to protect marketable title to the Job Site.

C. Mrs. Momenian will not interfere with or permit others to interfere with, stop, hinder, or delay completion of the Work by Unity or Subcontractors except as provided under this agreement.

D. All materials to be furnished by Mrs. Momenian under the Contract Documents shall be on hand and available at the location specified, when required in the normal course of construction. Unity makes no warrant that materials furnished by Mrs. Momenian are suitable for use in the Momenian Remodel Project and may reject such materials if Installation would materially increase the cost of construction or substantially delay completion of the Momenian Remodel Project.

XVI. Representations by Contractor

A. The Contract Price is based on Unity's careful evaluation of Plans, Specifications, Contract Documents, local conditions, including availability of labor, material, equipment, and transportation, the kind and character of soil and terrain, all available reports and tests on soil conditions, Work to be

performed by Mrs. Momenian or Separate Contractors, environmental and historic preservation considerations, applicable Code Requirements, climatic conditions, and other local conditions that may affect cost to Unity or duration of construction.

B. Unity shall use skill and attention to complete the Work in a timely manner consistent with the Contract Documents.

C. Based on a thorough evaluation of the Contract Documents, the Job Site, and all conditions that may affect construction cost and duration, Unity affirms that the Contract Price and Contract Time are fair and reasonable for completion of the Momenian Remodel Project.

D. Mrs. Momenian has reported to Unity all conditions known to Mrs. Momenian which may not be apparent to Unity and which might significantly increase cost of the Work or delay completion. These concealed conditions include, but are not limited to, hazards on the Job Site, unsuitable soil conditions, prior Defective Work of others, latent Defects in the Plans or Specifications, earlier attempts to do Similar or related Work, and obligations imposed by government.

E. Unity affirms that the company is financially solvent, licensed, experienced, competent, and has resources necessary to complete the Work in compliance with the Contract Documents.

F. Unity affirms that all Subcontractors will be financially solvent, licensed, experienced, competent, and will have resources necessary to complete the Work assigned in compliance with the Contract Documents.

XVII. Disclaimer by Owner, Reliance by Contractor

A. Unity acknowledges that information offered by Mrs. Momenian on subsurface or concealed conditions or structures at the Job Site represent only the opinion of Mrs. Momenian based on limited knowledge and understanding and is not part of the contract. Mrs. Momenian disclaims the accuracy of information provided to Unity.

XVIII. Discrepancy Between Plans and Field Conditions

A. Unity shall compare conditions at the Job Site with representations and Requirements in the Contract Documents. If Unity discovers a discrepancy between Job Site conditions and representations or Requirements in the Contract Documents, Unity shall promptly report the discrepancy to Mrs. Momenian, and provide a detailed explanation.

B. If any concealed structure, water, power, waste, drain or gas line is uncovered or revealed during construction which is not as indicated in the Contract Documents or is inconsistent with information provided by Mrs. Momenian, Unity shall promptly, and before any such structure or line is disturbed or damaged (except in an Emergency), notify Mrs. Momenian. Unity shall submit a Claim for a Change Order which covers the additional cost incurred as a result of such structure, water, power, waste, drain, or gas line uncovered or revealed during construction.

XIX. Access to Site by Owner

A. While Work is in preparation or in progress, Unity shall, at all times, provide access to the Job Site to Mrs. Momenian and those authorized by Mrs. Momenian. Unity shall provide safe and proper facilities for such access. Mrs. Momenian and those authorized by Mrs. Momenian shall have the right to inspect all Work done and all materials, equipment and fixtures furnished, installed, or stored in and about the Job Site.

B. If Mrs. Momenian or anyone authorized by Mrs. Momenian is on the Job Site while Work is in

preparation or progress and causes a delay or disruption of the Work or does damage to the Work, for which Unity is in no way responsible, Unity shall be entitled to extra compensation or an extension of time, or both.

XX. Use of the Site

A. Unity shall confine operations at the Job Site to the area allowed by Law, regulation, and permits. In no case shall the operations of Unity extend beyond the minimum area required to complete the Work. Unity shall not store on-site excess materials or equipment. Unity shall not use the Job Site as a staging, assembly, or storage area for other projects or for any purpose other than completing the Work.

XXI. Payment Plan

A. Mrs. Momenian will pay to Mr. Jamalreza the Contract Price in installments consisting of an initial payment, progress payments, and a final payment on completion of the Work.

XXII. Initial Payment

A. On 5/1/2016, Mrs. Momenian shall pay to Mr. Jamalreza \$25,000.00 as an advance on the Contract Price. At the start of work at the property, Ms. Momenian shall pay to Mr. Jamalreza \$15,000 towards the Contract price. The balance remaining at the start of work shall be \$8760.

XXIII. Progress Payments

A. Schedule of Progress Payments

1. Progress payment to be made after approximately 2/3rd of the job is completed, but prior to final walkthrough.

B. Processing of Progress Payments

1. No less than 2 calendar days before each progress payment is due under the terms of this contract, Unity shall provide Mrs. Momenian with an application for payment (invoice) in a form which complies with generally accepted trade practice.
2. Except as provided otherwise in this agreement, Mrs. Momenian shall pay the amount due within 2 calendar days after approval of any application for initial, progress or final payment.
3. \$5,000 due after approximately 2/3rds of project completion.

XXIV. Final Payment

A. Final payment of \$3,760 due upon final walkthrough. If punch list items are created, Mrs. Momenian is able to withhold up to \$1,500 of final payment until punch list is completed. In the instance of any outstanding Punch List items, withheld punch list allowance becomes Final Payment, and balance of \$3,760 becomes progress payment.

B. Making of final payment constitutes waiver of all Claims by Mrs. Momenian against Unity except those Claims previously made in writing and delivered to Unity and those obligations otherwise provided by this agreement or by operation of Law.

C. The acceptance of final payment by Unity constitutes a complete and unconditional waiver and release of any and all Claims by Unity of whatever nature, and regardless of whether they are then known or unknown, and a complete and unconditional release of Mrs. Momenian, and every person for whom Mrs. Momenian is responsible, for any and all matters related to the contract or otherwise, except those Claims which have been made in writing and identified by Unity as not having been settled at that

time.

D. Application for final payment constitutes affirmation by Unity that all payrolls, bills for materials, equipment charges, and other obligations of Unity in connection with the Work have been paid or otherwise satisfied.

E. If completion of the Work is delayed unreasonably at no fault of Unity, Unity shall be entitled to final payment for all Work completed without prejudice to the right of Unity to complete the Momenian Remodel Project at a later date and without prejudice to the right of Mrs. Momenian to make Claims against Unity for Defects in Work completed.

XXV. Changes in the Work

A. Except as provided elsewhere in this agreement, no change to this contract (including modification, clarification, interpretation or correction of the Plans or Specifications) shall be made without mutual agreement and a written Change Order signed by Unity and Mrs. Momenian identifying the change, the cost of the change, and the effect on Project schedule, if any.

B. The price adjustment for Extra Work or reduced Work required by a Change Order shall be the difference in cost to Unity for material, labor (including actual medical, pension and vacation expense), Subcontract expense, equipment cost, supervision, taxes, insurance and overhead plus a reasonable profit. Profit and overhead (including Job Site overhead, off-site overhead and overhead caused by delay) shall be 25 percent of the cost of Work performed by crews of Unity and 15 percent for Work performed by any Subcontractor. No deduction for overhead and profit shall be made on a Change Order which results in a net credit to Mrs. Momenian.

C. If any Change Order increases or decreases the time required for completion, Mrs. Momenian and Unity shall make an appropriate adjustment in the Contract Completion Date.

D. Unity may delay acting on any written or oral direction, instruction, interpretation, or determination of Mrs. Momenian which would constitute Extra Work and may assert the right to an amendment to this contract by written Change Order before proceeding.

E. Unity is authorized to make minor changes in the Work which are in the interest of Mrs. Momenian, do not materially alter the quality or performance of the Work, and do not affect the cost or time of performance, and comply with applicable Laws, codes, ordinances and regulations. Unity will inform Mrs. Momenian of each minor change made in the Work.

F. When a change in the Work has been proposed by Mrs. Momenian, Unity shall halt Work in the area of the proposed change and take steps to minimize any loss or waste which might result from implementing the proposed change.

G. When signed by Unity and Mrs. Momenian, each Change Order becomes a Contract Document. Any Change Orders requiring additional fees paid to Unity shall be paid within 2 business days of signing the Change Order.

H. Acceptance by Unity of payment for a Change Order shall constitute a waiver by Unity of all other Claims by Unity based on Work described in the Change Order.

XXVI. Cooperation of the Parties

A. Both Unity and Mrs. Momenian pledge that their relations will be conducted with courtesy and consideration in an environment characterized by mutual respect. Mrs. Momenian pledges to respond promptly to requests by Unity for guidance, assistance and payments when due and agrees to extend to

Unity the deference and latitude a dedicated professional deserves. Unity pledges to commit the skill and resources required to complete the Momenian Remodel Project in a manner that complies with both the letter and spirit of the Contract Documents and enhances the reputation of Unity for dependability and professionalism.

XXVII. Defective Work

A. General Requirements

1. Unity stands behind the quality of our work. Any concerns about defective workmanship should be elevated to Unity's attention immediately, so we can resolve whatever concerns there are promptly.

B. Rejected Work - Contractor's Obligations

1. Unity shall bear all expenses related to the correction of rejected Work and replacing rejected materials, including the expense of making good all Work of Unity, Mrs. Momenian and Separate Contractors destroyed or damaged by the corrections and replacements.
2. The value of rejected Work and rejected materials shall not be included in any application for payment by Unity or, if previously included, shall be deducted from the next application for payment submitted by Unity.
3. At the request of Mrs. Momenian, Unity shall search for the cause of a construction Defect.

C. Rejected Work - Contractor's Rights

1. If Unity disagrees with a decision on rejection of Work or rejection of materials, Unity may proceed with corrections under protest and invoke the provisions of this agreement which cover dispute resolution. If such rejection of Work or materials is found to be without merit or with no adequate foundation, Unity shall be entitled to a Change Order for Extra Work and Mrs. Momenian shall pay all costs associated with corrections completed under protest.
2. Mrs. Momenian may elect to execute a Change Order accepting Work which is not in compliance with the Contract Documents rather than requiring removal and correction by Unity.
3. Mrs. Momenian acknowledges and agrees that it may be inappropriate or unreasonably expensive to replace, refabricate or refinish building components with minor Defects or which are damaged slightly due to wear and tear commonly associated with the construction process. Unity may, at the sole discretion of Unity, (1) Correct minor Defects using procedures commonly accepted as good construction practice, or (2) Conclude that a cosmetic Defect is acceptable under good construction practice and take no corrective action.

XXVIII. Contractor Claims

- A. Unity and Mrs. Momenian agree to make a good faith effort to resolve all Claims that arise under this agreement and shall seek the opinion of expert disinterested parties on the validity of Claims, when appropriate. Claims not resolved to the mutual satisfaction of Unity and Mrs. Momenian shall be resolved under the provisions of this agreement covering dispute resolution.

XXIX. Insurance

A. General Requirements

1. Unity shall carry workers' compensation insurance and public liability insurance as required by Law and regulation for the protection of Unity and Mrs. Momenian during progress of the Work.

XXX. Interpretation of the Contract

- A. The omission of words or phrases in the Contract Documents or obvious typographical errors in the Contract Documents shall not defeat interpretation of the Contract Documents so long as the meaning is reasonably inferable from the Contract Documents taken as a whole.
- B. Words and abbreviations defined in this contract are capitalized and should be understood as defined. Words commonly used in the construction industry are to be understood in their recognized technical or construction industry context. Any word not defined in this contract and which does not have a well-known technical or construction industry meaning is to be understood as defined in the most recent edition of the Merriam-Webster Collegiate Dictionary.
- C. Nothing in the Contract Documents shall be interpreted as requiring Unity to violate any Law or regulation imposed by government.
- D. Words of any gender used in this contract shall be construed to include both genders. Words in the singular number shall be construed to include the plural, unless the context requires otherwise.

XXXI. Rights of Third Parties

- A. Except as expressly provided elsewhere in this agreement, Contract Documents shall not be construed to create a contractual relationship of any kind: (1) Between Owner's Representative and Unity, (2) Between Mrs. Momenian and any Subcontractor or Sub-subcontractor, (3) Between Mrs. Momenian and any consultant to Mrs. Momenian, or (4) Between any persons or entities other than Mrs. Momenian and Unity.

XXXII. Dealing With Plan Defects

- A. Unless Unity has asked for and received a written clarification from Mrs. Momenian in time to prevent delay in the Work, any omission or ambiguity in the Contract Documents shall be interpreted as requiring the material or construction technique necessary to produce the greater quantity and better quality of Work.
- B. If inconsistent, approved changes to the Contract Documents take precedence over the original Contract Documents. Subsequent changes to the Contract Documents take precedence over prior changes to the Contract Documents.
- C. Pending clarification by Mrs. Momenian, Unity shall perform no Work on any portion of the Momenian Remodel Project requiring an interpretation of the Contract Documents. Unity has no liability for Work done before discovering the need for interpretation so long as that Work was done in good faith reliance on one of the Contract Documents.

XXXIII. Assignment of the Contract

- A. Except as otherwise provided in this agreement, Unity shall not assign this contract or sublet it as a whole without the written consent of Mrs. Momenian.

XXXIV. Choice of Law

- A. The contract shall be governed by the Law of the State of Virginia.

XXXV. Entire Agreement

- A. The Contract Documents are the entire agreement and constitute a complete integration of all understandings between Unity and Mrs. Momenian on the subject of the Momenian Remodel Project. The Contract Documents supersede all prior negotiations, representations and agreements, whether

written or oral. No subsequent notation, renewal, addition, deletion, change or amendment to this contract shall have any force or effect unless in the form of a written Change Order or amendment to this contract.

XXXVI. Independent Contractor

- A. Unity shall perform all obligations required by this agreement as an independent contractor and not as an employee of Mrs. Momenian. No agent, employee or Subcontractor of Unity shall accrue leave, pension, insurance, or any other benefit provided to employees of Mrs. Momenian.
- B. Neither Unity nor any employee of Unity shall act as an agent, representative or employee of Mrs. Momenian. Unity shall have no authorization, express or implied, to bind Mrs. Momenian to any agreement, liability, or understanding, except as expressly provided in this contract.
- C. Nothing in this agreement shall be construed to create any partnership, joint venture, or other association between Mrs. Momenian and Unity.
- D. It is expressly agreed and understood that this is a nonpersonal services contract under which professional services rendered by Unity are rendered as an independent contractor.

XXXVII. Severability

- A. If any provision of this contract is interpreted or rendered invalid and unenforceable, then the remainder of this contract shall remain in full force and effect.

XXXVIII. Right to Stop Work for Non-Payment

- A. After giving reasonable notice, Unity shall have the right to suspend the Work under this contract if any payment not in dispute for Work completed, including payment for Extra Work, is not received by Unity as provided in this agreement. Once the Work is suspended, Unity may keep the Momenian Remodel Project idle until all payments due have been received by Unity.

XXXIX. Substantial Completion

- A. When, in the opinion of Unity, the Work is Substantially Complete, Unity shall prepare a preliminary Punch List of Work remaining to be done and deliver that Punch List to Mrs. Momenian with a request for evaluation of Substantial Completion. If, in the opinion of Mrs. Momenian, items on the preliminary Punch List are consistent with Substantial Completion, Mrs. Momenian shall conduct an Inspection of the Work to evaluate compliance with the Contract Documents.
- B. Before Mrs. Momenian takes possession or occupancy of the Momenian Remodel Project, Unity shall receive a comprehensive Punch List of discrepancies to be corrected or Work to be finished by Unity and a date for completing this Work. Unity shall complete and correct items on the Punch List by the designated date.
- C. After Substantial Completion, Unity shall remain responsible for: (1) Damage caused by Unity while completing the Work, and (2) Safety of crews when completing the Work.
- D. After Substantial Completion, Unity shall enter the Job Site only for the purpose of completing or correcting items on the Punch List or for the purpose of doing call-back or warranty Work when requested by Mrs. Momenian.
- E. Upon Substantial Completion of the Momenian Remodel Project, Unity shall promptly remove from the Job Site all barricades, construction tools, equipment and supplies, and all temporary structures used during construction.

Statement Required by Title 18 Virginia Administrative Code Section 50-22-260

- (1) This contract includes an estimated date when work will begin and the estimated completion date.
- (2) This contract shows the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment.
- (3) If the work involved requires a construction permit, final payment under this contract is not required until final approval is obtained from the building official's office.
- (4) This contract lists the work to be performed and the materials required.
- (5) Events beyond the control of Unity may delay completion of the work. Delay caused by these events do not constitute abandonment of the work and may delay dates set for payment.
- (6) Unity will comply with all local requirements for permits, inspections, and zoning;
- (7) Both Virginia Code Annotated § 59.1-21.1 to § 59.1-21.7.1 and 12 Code of Federal Regulations § 226.15 give Mrs. Momenian the right to cancel this contract until midnight of the third business day after the day this agreement is signed. In compliance with Virginia Code Annotated § 59.1-21.4(2)(b)(ii) , cancellation forms made part of this agreement meet the requirements of Federal law.
- (8) The full name, address and license or registration number of Unity appear in this contract.
Expiration date of this license or registration is 12/31/2017
The class of this license or registration is A
- (9) Any modification to this contract which changes the cost, materials, work to be performed or estimated completion date will be in writing and will be signed by both Unity and Mrs. Momenian.
- (10) This contract includes a signed acknowledgment that Mrs. Momenian has read the Statement of Consumer Protection provided by the Virginia Board for Contractors.
- (11) Anyone awarded a civil court judgment against a licensed contractor for improper or dishonest conduct may be eligible to recover up to \$10,000 from the Contractor Transaction Recovery Fund. To find out more about this fund, contact: Contractor Transaction Recovery Fund Section, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, (804) 367-1559.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

STATEMENT OF CONSUMER PROTECTIONS

THIS CONSUMER INFORMATION SHEET IS PROVIDED THROUGH THE BOARD FOR CONTRACTORS AND MAY BE REPRODUCED BUT NOT ALTERED

If you are about to engage the services of a contractor in the Commonwealth of Virginia, you should be aware of the state's program for the regulation of this occupation by licensing or certifying these businesses. Any contractor who undertakes a project the total value of which is \$120,000 or more is required to have a valid Class A license issued by the Board for Contractors. Any contractor who undertakes a project the total value of which is over \$10,000 but less than \$120,000 must have a valid Class B license. A licensed contractor has met standards established by the Board for Contractors to ensure that the licensee possesses the character, knowledge, and skills necessary to practice without harm to the public. Any contractor who undertakes a project the total value of which is more than \$1,000 but no more than \$10,000 is required to have a valid Class C license. Class C licensure requires that the contractor submit information to the Board for Contractors concerning the location, nature, and operation of the business, as well as evidence of experience and information on the applicant's credit history.

Before signing any contract, you should ask to see the license or the pocket card issued with the license number and check to be sure that it has not expired and that the contractor is working within the limits of his licensure. The authority of the Board for Contractors to discipline the licensed contractors is

limited to specific violations of the law and/or regulations of the board, such as written citations from the local Building Inspectors for violations of the Virginia Uniform Statewide Building Code or practices which constitute abandonment, gross negligence, continued incompetence, or misconduct in the practice of the profession. In such cases disciplinary action by the board is limited to fines and/or remedial education, revocation or suspension of the contractor's license and placing the licensee on probation. Such action can only be taken after a hearing or with the consent of the license holder and his agreement to waive his right to a hearing.

The board does not have the authority to order a license holder to make restitution to you for losses you may have incurred due to the contractor's poor performance; efforts to recover such funds must be made through the civil courts. If you are planning to take such action against the contractor, you should contact the Board for Contractors Adjudication Section at (804) 367-1559 in order to receive information about the Virginia Contractors Transaction Recovery Fund and the procedures for applying to recover from the fund if you are unable to collect after judgment is awarded in court. Issues involving cosmetic defects in workmanship must be resolved by negotiation between you and your contractor or civil action to enforce the terms of your contract if necessary. **You should be careful in reviewing the contract before signing it in order to be sure that the terms of the agreement are clear and acceptable to you.** You should know that the Board for Contractors recommends that the initial down payment is no more than 10% or \$1,000, whichever is less, unless the job requires custom made items, where the initial down payment should be no more than 30% of the total value of the contract and that, if you are dissatisfied with the work performed by the sub-contractors, you may hold the general contractor responsible. Finally, remember that, in accordance with the Virginia Home Solicitation Sales Act (Code of Virginia, Section 59.1-21.1 et seq.), you have a three-day right to cancel a contract which you have negotiated in your home. (For more precise information about the application of this law, see the Code of Virginia or seek legal advice.) Should you have reason to believe that your contractor may not have complied with the rules and regulations of the Board for Contractors, you should notify the Department of Professional and Occupational Regulation by calling (804) 367-8504 or write to the following address: Department of Professional and Occupational Regulation, Compliance and Investigations Division, The Perimeter Center Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233. The aforementioned information is not intended to be an exhaustive list of the remedies available to you through your local government or other agencies. If you need additional assistance, call the Office of the Attorney General, Consumer Protection Section at (800) 552-9963 or (804) 786-2042, or write to the following address: Office of the Attorney General of Virginia, Consumer Protection Section, 900 East Main Street, Richmond, Virginia 23219.

Acknowledged by Mrs. Momenian

6/2/2016



Date:

Signatures

The signatures that follow constitute confirmation by those signing that they have examined and understand the Contract Documents and agree to be bound by the terms of these documents.

This agreement is entered into as of the date written below.

Nahid Momenian, Owner

M
(Signature)

6/2/2016
(Date)

Nahid Momenian
(Printed Name)

M
(Signature)

6/2/2016
(Date)

Nahid Momenian
(Printed Name)

Unity Building, LLC, Contractor

(Signature)

(Date)

(Printed Name and Title)

NOTICE OF RIGHT TO CANCEL UNDER REGULATION Z

(12 CFR 226.15(b) requires that each owner receive two copies of this notice.)

To: Mrs. Momenian

Re: Your right to cancel Momenian Remodel Project

You are entering into a transaction that will result in a security interest being placed on your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) The date of the transaction, which is _____, or
- (2) The date you receive your Truth in Lending disclosures, or
- (3) The date you receive this notice of your right to cancel.

If you cancel this transaction, the security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the security interest on your home has been cancelled, and we must return to you any money or property you have given us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to cancel:

If you decide to cancel this transaction, you may do so by notifying us in writing at:

Unity Building, LLC
 PO Box 134
 Great Falls, Virginia 22066
 703-935-9949

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of _____ (midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

 Signature Date

See the next page for important information about what happens if this agreement is cancelled.

Notice Required by 12 Code of Federal Regulation Section 226.15(d), Effects of Rescission

- (1) When a consumer rescinds a transaction, the security interest giving rise to the right of rescission becomes void, and the consumer shall not be liable for any amount, including any finance charge.
- (2) Within 20 calendar days after receipt of a notice of rescission, the creditor shall return any money or property that has been given to anyone in connection with the transaction and shall take any action necessary to reflect the termination of the security interest.
- (3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

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VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of J. Matthew Hogendobler, DMD
Appeal No. 17-13

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VIRGINIA:

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

IN RE: Appeal of J. Matthew Hogendobler, DMD
Appeal No. 17-13

REVIEW BOARD STAFF DOCUMENT

Suggested Summary of the Appeal

1. J. Matthew Hogendobler, DMD (Dr. Matt), owner of the home located at 2209 N. Lakeside Drive in the City of Virginia Beach, appeals determinations of the City of Virginia Beach Code Enforcement Division (CED), in enforcing Part III of the Uniform Statewide Building Code (Virginia Maintenance Code or VMC), concerning an existing swimming pool on the property built in 1977, which Dr. Matt argues is no longer a swimming pool, but has been converted to a pond. This staff summary hereinafter refers to the swimming pool/pond as “the structure.” The City also issued a violation to Dr. Matt of the City’s municipal code for the structure.

2. CED issued an inspection report and VMC Notice of Violation for the structure in June of 2017 requiring the structure to be maintained in a clean and sanitary condition, and in good repair, and indicated the pool liner was ripped and in disrepair, and the pool pump and filter were not operational. The Notice of Violation was sent to Dr. Matt by regular mail.

3. In August of 2017, Dr. Matt received correspondence from the Assistant County Attorney relative to discussions between himself and the City concerning the municipal code violation.

4. Also in August of 2017, Dr. Matt filed an appeal by letter to the City of Virginia Beach City Manager, initiating an appeal under the VMC.

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5. The City of Virginia Beach Board of Building Code Appeals, Property Maintenance Division (City appeals board), heard Dr. Matt's appeal in October of 2017 and ruled to dismiss his appeal as being untimely, but added a note that the Notice of Violation was correctly issued.

6. Dr. Matt filed an application for appeal to the Review Board in November of 2017. Review Board staff contacted the parties and asked for the submittal of any relevant documents. Subsequently, Review Board staff scheduled an informal fact-finding conference to meet with the parties and go over the issues in the appeal.

7. In February of 2018, Review Board staff conducted the conference attended by all parties. The first issue discussed was whether Dr. Matt was appealing the June VMC Notice of Violation and whether there was any record of when he received that Notice of Violation. CED representatives indicated the Notice of Violation was sent via mail, per department policy, and that this mailed notice was not returned to the City. Dr. Matt indicated that he had never received the VMC Notice of Violation, but had received the zoning ordinance violation and therefore was appealing the June VMC Notice of Violation. In addition, at the conference, Review Board staff gave the parties copies of prior Review Board decisions concerning the timeliness of appeals and whether structures no longer used for their original purpose were required to be maintained. Review Board staff also provided the Virginia building code language in existence when the structure was originally constructed and correspondence from the Virginia Office of the Attorney General in 1976 concerning that language and whether ponds are considered swimming pools.

8. Subsequent to the informal fact finding conference, Review Board staff drafted this staff document and forwarded it to the parties along with a copy of all documents and opportunity given for the submittal of additions, corrections or objections to the staff document and the

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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 Issues for Resolution by the Review Board

1. Whether to overturn the decision of the City appeals board that Dr. Matt's appeal was untimely; and if ruling in the affirmative,

2. Whether to overturn the issuance of the June VMC Notice of Violation issued by CED concerning whether the structure is regulated under the VMC and, if necessary, whether to overturn the City's related decisions concerning whether the City's Permits and Inspections Department regulates the conversion of the structure.

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BASIC APPEAL DOCUMENTS

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JUN 26 2017

17-06-PBM-13674



City of Virginia Beach

DEPARTMENT OF HOUSING AND NEIGHBORHOOD PRESERVATION

CODE ENFORCEMENT DIVISION

MUNICIPAL CENTER
BUILDING 18A
2424 COURTHOUSE DRIVE
VIRGINIA BEACH VA, 23456-9083
(757) 385-4421
FAX (757) 385-5694

HOGENDOBLER J MATTHEW
2209 N LAKESIDE DR
VIRGINIA BEACH, VA 23454-2017

NOTICE OF BUILDING CODE VIOLATION

The City of Virginia Beach has ordinances in effect that are designed to preserve and enhance neighborhood quality, maintain property values, and ensure safe, decent, and sanitary living conditions are provided. Since violations of these ordinances have a detrimental effect on the appearance and quality of the City's neighborhoods and housing units, your cooperation is requested in complying with this notice.

An inspection of the property identified in the enclosed inspection report revealed that the property is in violation of the Virginia Maintenance Code as adopted by Section 16-3.1 of the City Code. In accordance with Section 104.5.4.2 of the Virginia Maintenance Code, you are hereby notified to correct the violation(s) within the number of days indicated on the enclosed inspection report. Failure to comply with this notice shall result in the appropriate legal proceedings being instituted to obtain compliance.

If there are practical difficulties involved in complying with this request, you may apply to the Code Enforcement Division for an extension in the time allowed to comply. Application for an extension should be in writing, briefly state the reasons for the request, indicate the amount of time needed for compliance, and be sent to the inspector identified below.

Section 106.5 of the Virginia Maintenance Code provides for appeals concerning the application of this code or the refusal to grant a modification to the provisions of this code covering the manner of construction or materials to be used in the erection, alteration, repair or maintenance of a structure. Appeals shall be submitted to the Building Code Board of Appeals within 14 days. Appeals should be addressed to the board, in care of this office.

If this involves an interior violation, or an exterior violation that is not visible from the public right-of-way, please call 757-385-4421 to schedule the re-inspection once the corrections have been made. In case of error, or if you have sold or otherwise disposed of this property, please call the inspector immediately at **Monday through Friday 8:00 A.M. - 4:30 P.M**

Justin Doyle

Code Enforcement Inspector

**YOUR RE-INSPECTION WILL
BE ON: 7-26-17**

JUN 26 2017

Period of correction begins on date stamped.



City of Virginia Beach

**DEPARTMENT OF HOUSING AND NEIGHBORHOOD PRESERVATION
CODE ENFORCEMENT DIVISION
MUNICIPAL CENTER
2424 COURTHOUSE DRIVE
BUILDING 18A
VIRGINIA BEACH VA, 23456-9083
(757)385-4421
FAX (757)385-5694**

HOGENDOBLER J MATTHEW
2209 N LAKESIDE DR
VIRGINIA BEACH, VA 23454-2017

EXTERIOR INSPECTION REPORT

CASE NUMBER 17-06-PBM-13674
GPIN 24082709040000
DATE OF INSPECTION 6/22/2017
INSPECTOR Justin Doyle

RE: 2209 N LAKESIDE DR
 VIRGINIA BEACH, VA 23454-2017

OWNER NAME HOGENDOBLER J MATTHEW
OWNER ADDRESS 2209 N LAKESIDE DR
 VIRGINIA BEACH, VA 23454-2017

CODE	DESCRIPTION	CORRECT VIOLATION WITHIN
303.1 SWIMMING POOLS	<p>Pools shall be maintained in a clean and sanitary condition, and in good repair.</p> <p>Pool liner is ripped and is in disrepair.</p> <p>Pool pump and filter must be operational.</p>	30 day(s)

August 25, 2017

VIA EMAIL

David L. Hansen, City Manager
City of Virginia Beach Municipal Center
2401 Courthouse Drive, Building #1
Virginia Beach, Virginia 23456-9001

Re. Time-sensitive "Application for Appeal" to City Board of Appeals, Building Maintenance Division

Dear Mr. Hansen:

I am the homeowner occupying the residence on the property located at 2209 N. Lakeside Drive and the party aggrieved by the decisions of one or more City code officials; therefore, pursuant to Section 106 of Chapter 1¹ (specifically Section 106.5) of the Virginia Maintenance Code (VMC), I submit this document, including any and all associated exhibits, links and citations, whether or not referenced herein, as my formal and official "Application for Appeal" to a litany of events beginning over 15 months ago and, according to an email sent to me on Wednesday, August 16, 2017, culminated in decisions made during a meeting of the Administrator and staff members of the Code Enforcement Division of the City's Department of Housing and Neighborhood Preservation, with the Division's legal counsel, an Assistant City Attorney, present. (It was he, who sent the email advising me of the meeting decisions.)

The same Section of the VMC "mandates" my submission of this application; to wit: "Failure to submit an application for appeal within the time limit established by this section [14 calendar days] shall constitute acceptance of a code official's decision." Unfortunately, there appears to be no clear and objective protocol for City homeowners to follow in order to do so (at least, not without submitting the application to the code official whose decisions are the subjects thereof); therefore, I submit this application to you for handling, along with my trust that it will be forwarded to the appropriate party (1) on or before the end of business Tuesday, August 29, 2017, the date I was told the meeting would be held; and (2) in accordance with Section 106.3, specifically the clause which states, "Employees or officials of the locality shall not serve as members of the Local Board of Building Code Appeals (LBBCA)" and Section 106.4, in its entirety.

Paraphrasing a section of Andrea Kilmer's August 14, 2017 "Outside Loan Closing Date" extensions request, I have exchanged hundreds of emails and documents with staff of the City's Code Enforcement Division (including counsel for the City), many of which I expect to avail to the appropriate division of the LBBCA. It serves no purpose to argue the merits of my appeal absent that information, other than to provide support for the few assertions made to qualify this application; however, if you wish, I will be more than happy to copy you on the information when requested by the LBBCA as confirmation of the arguments I make thereto.

Nearly a decade ago, I began the process of naturalizing my privacy fence-and-hedge-enclosed back yard, having for years made tangible and material progress toward achieving completion of the pool-to-pond conversion. It is primarily –but not solely- because Administrator Freed offered that legally acceptable option only last week, after initiating court action, that I officially submit this application and eagerly await further instruction soonest.

Sincerely,



Dr. Matt Hogendobler

¹https://codes.iccsafe.org/public/document/code/600/10214866?code_id=10214866

29 August 2017

Dr. J. Matthew Hogendobler
Eastwood Manor House
2209 N. Lakeside Drive
Virginia Beach, Virginia 23454
757-618-1001 hogident@gmail.com

re. Application for Appeal of Code Enforcement Division decisions reported on August 16, 2017

To the members of the Virginia Beach Board of Building Code Appeals:

ARTICLE XXII, Sec. 2-451 of the City's Code of Ordinances identifies as "currently established" the Board of building code appeals and, according to a statement by City Clerk Ruth Hodges Fraser, "the Members on all Divisions of the Board of Building Code of Appeals have served far beyond their limitation of terms... Luckily, since the Board never meets, these persons are willing to continue to serve with their expertise."

If true, the [Building Maintenance Division](#) is comprised of four members: Thomas Atherton III, Ruth Bell, Mrs. Jimmie A. Kock and Morton Savell, the Virginia Maintenance Code (VMC) requirement that the Board be comprised of at least five members, notwithstanding.

Virginia Uniform Statewide Maintenance Code Sec.106.2 states, "The LBBCA (Local Board of Building Code Appeals) shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality."

Supervisor Blake was incorrect, when he wrote that my application for appeal requires me to identify the code official whose decisions I seek to appeal, because Section 106.5 of the VMC actually states, "any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA." While the VMC requires the city to appoint a code official, it does not require any pointing of fingers when submitting an application for appeal.

Virginia Beach Code of Ordinances Sec. 2-432 states, "the department of housing and neighborhood preservation shall, by the code enforcement administrator, perform all of the functions and have all of the powers of the code official as set forth in the Virginia Uniform Statewide Building Code for existing structures" and the Virginia Maintenance Code states "Section 104.1 establishes the requirements for enforcement of this code, [which] shall be carried out by an agency or department designated by the local governing body. (Ord. No. 1921, 10-2-89; Ord. No. 2467, 1-13-98) [N.B. VMC Sec. 104.4 requires jurisdictions enforcing the code "to designate the agency within the local government responsible for such enforcement and appoint a code official." Section 202 defines it as "the official who is charged with the administration and enforcement of this code, or any duly authorized representative" (singular).]

According to VMC Sec. 104.5, *et seq.*, the appointed code official (who, in Virginia Beach, is Code Enforcement Division Administrator Wells Freed), is required to enforce the VMC "as

interpreted by the State Review Board,” issue all necessary notices or orders to ensure compliance with the code, accept responsibility for assuring that those he delegates with such powers carry them out in accordance with the provisions of the code, and is authorized to approve a modification of any provision of the code provided the spirit and intent of the code are observed and public health, welfare and safety are assured, the latter of which I was denied.

VMS Sec. 104.5 states, “The code official shall enforce this code as set out herein and as interpreted by the State Review Board and shall issue all necessary notices or orders to ensure compliance with the code.” Sec. 104.5.1 states, “The code official may delegate powers and duties except where such authority is limited by the local government. When such delegations are made, the code official shall be responsible for assuring that they are carried out in accordance with the provisions of this code.” Sec. 104.5.2 states, “**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.”

Instead, the code official mistakenly maintained his identification of the subject structure as a swimming pool and his misinterpretation of my case record as non-compliant, both of which resulted in the same decision required of an owner of a structure deemed to be unsafe or unfit for human occupancy: **restore or remove**. Neither of his perceptions were true and, as the subject decisions emailed to me on Wednesday, August 16, 2017 confirmed, albeit after initiating legal action, Mr. Freed’s previously unwavering demands, with which I knew better than to agree, were unconscionable and biased. (Mine is viewed as a “high profile” case.)

The term, “Swimming Pool,” is not defined in the VMC; however, according to the last sentence of Sec. 201.3, “Where terms are not defined in this code and are defined in other codes,... terms defined in the VCC shall be used for this code and shall take precedence over other definitions.” According to the [2012 edition of the VCC](#), “Swimming Pool” is defined as “an aquatic vessel as defined in the International Swimming Pool and Spa Code (ISPSC).” The 100-page [ISPSC](#) defines the term by distinguishing public from residential pools, the definition for the latter of which, reads “Any pool **intended for use** which is accessory to a residential setting and available only to the household and its guests. All other pools shall be considered public pools for purposes of this code.” But there is one more factor to consider: the City’s definition, and failing to reconcile the two definitions would be insufficient and, most probably, counterproductive. Like ISPSC, the City’s Code of Ordinances ([Sec. 34-3](#)) distinguishes between residential and public pools; to wit, as follows: “Type 1 swimming pool: Any structure that contains **water over twenty-four (24) inches (610 mm) in depth and which is used, or intended to be used, for swimming or recreational bathing** in connection with an occupancy in residential use group R-3 and which is available only to the family and guests of the householder. This includes residential in-ground, aboveground and on-ground swimming pools, hot tubs and spas. Type 2 swimming pool: Any pool, other than a type 1 swimming pool.” Since the City’s definitions do not contradict those stipulated by the VMC, the most detailed definition (that of the City) prevails.

VMC Sec. 105.1 applies to existing structures which are classified as unsafe or unfit for human occupancy. “All conditions causing such structures to be classified as unsafe or unfit for human occupancy shall be remedied or as an alternative to correcting such conditions, the structure may be vacated and secured against public entry or razed and removed.”

VMC Sec. 202 defines an Unsafe Structure as “an existing structure (i) determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public, (ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely. The same Section defines a Structure Unfit for Human Occupancy as “an existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential equipment, or (ii) the required plumbing and sanitary facilities are inoperable.”

There is no doubt but that the structure is unfit for human occupancy. It has been a pond intended for fauna, like frogs and koi, for nearly a decade, and with a water depth, which varies between 15 and 20 inches. Therefore, it is not, by definition, a swimming pool of any type, since the water is not over twenty-four (24) inches (610 mm) in depth and it is not used, nor intended to be used, for swimming or recreational bathing. As such, and because there are no provisions for ponds in any code banks, the Department of Housing and Neighborhood Preservation should have no jurisdiction, whatsoever, over the governance of a residential pond, which has been nearly ten years in the making.

Since it was never inspected, the allegation that the equipment is not operational (defined as “in or ready for use”) is malicious prosecution, like the notices citing me for violations of Sec. 23-50(a): “there exists upon any land or premises within the city, any trash, garbage, refuse, litter or similar substances,” since the allegation is and was completely false, and Sec. 23-50(b): “there exists on any land or premises within the city, any grass, weeds, brush or similar vegetation in excess of ten (10) inches in height,” since the front yard was mowed on the same day and before inspection and the back yard, as a wooded area exempted by Sec. 23-50(f)(11), has for several years had neither grass nor weeds.

With respect to the notice of violations of the VMC, there was no preceding corrective notice; nor was the notice of violation issued in accordance with the requirements of the VMC. Even Mr. Freed’s “official” communication, a single email written in response to my voice mail, my father’s private email and a telephone call from a television station reporter, was replete with demeaning phrases and heavy-handed tactics meant to impress the media at my (and my father’s) expense. (My father did not copy me on his email to Mr. Blake; I read it for the first time when Mr. Freed emailed it to me.) Furthermore, the notice I finally received was by request and via email from the division’s city attorney, and it lacked any reference to the appeals process.

Sec. 104.5.4 states, “Upon findings by the code official that violations of this code exist, the code official shall issue a correction notice or notice of violation to the owner or the person responsible for the maintenance of the structure. Sec. 104.5.4.1 states, “The correction notice shall be a written notice of the defective conditions. The correction notice shall require correction of the violation or violations within a reasonable time unless an emergency condition exists as provided under the unsafe building provisions of Section 105.” Sec. 104.5.4.2 states that, “**If the code official determines there are violations of this code other than those for unsafe structures, unsafe equipment or structures unfit for human occupancy under Section 105, the code official may issue a notice of violation to be communicated promptly in writing to the owner or the person responsible for the maintenance or use of the building or structure in lieu of a correction notice as provided for in Section 104.5.4.1. In addition, the code official shall issue a notice of violation for any uncorrected violation remaining from a correction notice established in Section 104.5.4.1. A notice of violation shall be issued by the code official before initiating legal proceedings unless the conditions violate the unsafe building conditions of Section 105 and the provisions established therein are followed.** The code official shall provide the section numbers to the owner for any code provision cited in the notice of violation. **In addition, the notice of violation shall indicate the right of appeal by referencing the appeals section of this code.**”

By employing the word “should” in place of “shall,” it was reasonable to construe that Mr. Freed’s intention was to mislead, which he did. Moreover, his message seemed clearly punitive, and I, for one, was shocked that a City employee, particularly one in a position of significant leadership, would set such an example.

I am not shocked anymore. Of the hundreds of emails exchanged with Mr. Freed's staff, only about 20% were reliable or in accordance with the prevailing codes and ordinances; however, I do not hold anyone accountable for that but the one, to which the VMC relegates the responsibility: the code official, Administrator Freed, who chose newly hired Justin Doyle to be the inspector of record. (I would like to see his credentials, as permitted by the VMC.)

According to Sec. 101.6, the provisions of Chapter 1 of the VMC supersede any provisions of Chapters 2–8 of the IPMC, including any provisions of the codes and standards referenced therein, that address the same subject matter and impose differing requirements. It is noteworthy because, according to Sec. 103.2 of Chapter 1, “No provision of this code shall require alterations to be made to an existing building or structure or to equipment unless conditions are present which meet the definition of an unsafe structure or a structure unfit for human occupancy,” neither condition of which the Code Enforcement Division believed to have existed or it could not legally have issued me a Notice of Violation only.

VMC Sec. 103.1 states, “This code prescribes regulations for the maintenance of all existing buildings and structures and associated equipment, including regulations for unsafe buildings and structures.” Sec. 103.2 states, “Buildings and structures shall be maintained and kept in good repair in accordance with the requirements of this code and when applicable in accordance with the USBC under which such building or structure was constructed. No provision of this code shall require alterations to be made to an existing building or structure or to equipment unless conditions are present which meet the definition of an unsafe structure or a structure unfit for human occupancy.”

VMC Sec. 105.2 states, “The code official shall inspect any structure reported or discovered as unsafe or unfit for human habitation and shall prepare a report to be filed in the records of the local enforcing agency and a copy issued to the owner. The report shall include the use of the structure and a description of the nature and extent of any conditions found.”

VMC Sec. 105.4 states, “When a structure is determined to be unsafe or unfit for human occupancy by the code official, a written notice of unsafe structure or structure unfit for human occupancy shall be issued by personal service to the owner, the owner's agent or the person in control of such structure. The notice shall specify the corrections necessary to comply with this code, or if the structure is required to be demolished, the notice shall specify the time period within which the demolition must occur. Requirements in Section 104.5.4 for notices of violation are also applicable to notices issued under this section to the extent that any such requirements are not in conflict with the requirements of this section. (Note: Whenever possible, the notice should also be given to any tenants of the affected structure.)”

VMC Sec. 105.5 states, “If the notice is unable to be issued by personal service as required by Section 105.4, then the notice shall be sent by registered or certified mail to the last known address of the responsible party and a copy of the notice shall be posted in a conspicuous place on the premises.”

I am hopeful that this, my application for the Board to hear my appeal, will be accepted, and I will be given the opportunity to present the evidence and share the merits of my case.

Thanking you in advance for your anticipated understanding and interest, I am

Respectfully yours,



Dr. Matt Hogendobler

Via email transmission to

Barry Frankenfield, Director
Department of Planning and Community Development

Andrew M. Friedman, City Staff Liaison
Local Board of Building Code Appeals
Department of Housing and Neighborhood Preservation
Code Enforcement Division
2424 Courthouse Drive, Bldg. 18A
Virginia Beach, Virginia 23456

Ruth Hodges Fraser, City Clerk
City of Virginia Beach

Cheri B. Hainer, Administrator
Permits and Inspections Division
2405 Courthouse Drive Bldg 2 Room 100
Virginia Beach, Virginia 23456

On Wed., Aug 16, 2017 at 12:01 PM, Tobias Eisenlohr <teisenlo@vbgov.com> wrote:

Dr. Hogendobler,

The letter you submitted does not constitute a plan for removal. It does not have a timeline or indicia of real actions you have taken to remedy the violations. Therefore, the City will initiate court action against you. You will be receiving two summonses for the noticed violations. We will request a court date no less than forty-five days from the magistrate's issuance of the summonses.

However, the city will ask for the charges to be dismissed if you complete one the following prior to your court date:

- Restore the pool to full compliance with the Virginia Property Maintenance Code.
- Legally convert the pool into a pond, including obtaining all necessary permits and a successful final inspection from the City's Planning Department, Permits & Inspections Division

-Legally demolish or fill in the pool.

Tobias L. Eisenlohr
Assistant City Attorney
Office of the City Attorney
City of Virginia Beach
Municipal Center-Building 1
2401 Courthouse Drive
Virginia Beach, VA 23456
757-385-4531 (Office)
757-385-8200 (Direct)
757-385-5687 (Fax)
teisenlo@vbgov.com

On Fri, Aug 11, 2017 at 5:03 PM, Tobias Eisenlohr <teisenlo@vbgov.com> wrote:

Justin, Randy, and I will discuss this matter with Wells Freed when he returns to the office on Tuesday.

From: Dr. Matt [<mailto:hogident@gmail.com>]
Sent: Friday, August 11, 2017 2:55 PM
To: Randy Blake <RBlake@vbgov.com>
Cc: Tobias Eisenlohr <teisenlo@vbgov.com>; Justin M. Doyle <JDoyle@vbgov.com>
Subject: Re: Written documentation from Dr. Matt Hogendobler

"No, I am not embarrassed that I inadvertently scooped up and gave you my first attempt at long-hand in years," he typed, sarcastically.

CapeHenry1607.com

On Aug 11, 2017, at 2:27 PM, Randy Blake <RBlake@vbgov.com> wrote:

Dr. Matt,

Here is a scanned copy of the letter that I received from you today.

Thank You

Randy

Randy Blake
Code Enforcement Supervisor
2nd Precinct
Office (757) 385-1276
Cell (757) 373-4883
Fax (757) 385-5694
rblake@vbgov.com

From: **Tobias Eisenlohr** <teisenlo@vbgov.com>
Date: Thu, Aug 10, 2017 at 8:45 AM
Subject: RE: [IMPT] Re: Automatic reply: The list
To: "Dr. Matt" <hogident@gmail.com>

Call P&I first

From: Dr. Matt [<mailto:hogident@gmail.com>]
Sent: Wednesday, August 09, 2017 5:28 PM
To: Tobias Eisenlohr <teisenlo@vbgov.com>
Cc: Clyde Ken Hogendobler <clydekh@yahoo.com>; Stuart Nesbit <jstuartnesbit@gmail.com>; Justin M. Doyle <JDoyle@vbgov.com>; Randy Blake <RBlake@vbgov.com>; Russell Dawley <RDawley@vbgov.com>; Dr. Matt Hogendobler <hogident@gmail.com>
Subject: Re: [IMPT] Re: Automatic reply: The list

God bless you. Gratia. Vielen dank. Gracias. Thank you.

Clearly I cannot accomplish that today. Will you give me a few more days to submit a proposal since now I have options we may all be able to work with?

JMH

On Aug 9, 2017, at 4:25 PM, Tobias Eisenlohr <teisenlo@vbgov.com> wrote:

I spoke with our Permits & Inspections department. Converting a pool into a pond requires a permit. To prevent algae growth, you must also either have a working filter system or crack the bottom of the concrete to permit infiltration. And if the pool/pond is deeper than 24 inches it must be fenced. If you intend are determined to go the pond route, please contact our permits & inspections department at 385-4211.

From: Dr. Matt [mailto:hogident@gmail.com]

Sent: Wednesday, August 09, 2017 4:02 PM

To: Tobias Eisenlohr <teisenlo@vbgov.com>

Cc: Justin M. Doyle <JDoyle@vbgov.com>; Randy Blake <RBlake@vbgov.com>; Stuart Nesbit <jstuartnesbit@gmail.com>; Clyde Ken Hogendobler <clydekh@yahoo.com>; Dr. Matt Hogendobler <hogident@gmail.com>; Russell Dawley <RDawley@vbgov.com>

Subject: [IMPT] Re: Automatic reply: The list

Mr. Eisenlohr:

I am appreciative of the fact that Justin will not be back until tomorrow and you have given me until then to present an initial proposal in complying with your, as yet unreceived by USPS mail, notice alleging violation of the VA Building Maintenance Code specific to inground residential pools undergoing conversion to naturalized ponds (wetlands); primarily because I remain without access to my computer (containing all of my data in preparing my proposal). It will not even boot up; which is why I have to communicate emails using my telephone. (I may be a dentist used to tiny workspaces, but typing emails like that using the keypad on Apple's smallest iPhone is almost a virtual impossibility.)

As we agreed, and for which I am grateful, I will get Mr. Doyle something tomorrow by the end of the day (most likely it will not be sent until after I speak with him during his "reinspection." (Please have him call me or email me the time he expects to be here so I may have the gate key ready and will be able to speak with him during the visit.)

The "proposal" may not be what you want to read nor may it be what I ultimately expect will be done, but it's a start, from which our negotiations, if permitted, may begin.

Please also expect a few more non sequitur-type emails from me before this day ends, because all I have is this phone and the pictures I have taken with it.

Thank you, one and all.

Very respectfully yours, I remain,

Dr. Matt

P.S. to Justin: I look forward to showing you the laptop in question.

From: **Tobias Eisenlohr** <teisenlo@vbgov.com>

Date: Mon, Aug 7, 2017 at 10:46 AM

Subject: Notices

To: "Dr. Matt ." <hogident@gmail.com>

Cc: "Justin M. Doyle" <JDoyle@vbgov.com>, Randy Blake <RBlake@vbgov.com>

Dr. Hogendobler,

I have attached the Notices of Violation. The notice for Public Nuisance (municipal code 23-46) was sent via first class mail on June 8. The notice for the various pool maintenance issues (Virginia Maintenance Code 303.1) was sent via first class mail on June 22.

Inspector Doyle is out of the office until this Thursday (8/10). It is my understanding he will reinspect the property on that same date. As I stated in my previous email, the city will accept a plan for the repair or removal of the pool in lieu of continued court action. You may also provide a written plan to Inspector Doyle via email prior to the 8/10 reinspection date. If the plan demonstrates a good-faith effort to abate the ongoing violations related to the pool within a reasonable period of time, the city will suspend enforcement of the codes for which you were cited to allow you time to proceed.

Tobias L. Eisenlohr
Assistant City Attorney
Office of the City Attorney
City of Virginia Beach
Municipal Center-Building 1
2401 Courthouse Drive
Virginia Beach, VA 23456
757-385-4531 (Office)
757-385-8200 (Direct)
757-385-5687 (Fax)
teisenlo@vbgov.com

From: **Wells Freed** <WFreed@vbgov.com>

Date: Wed, Jun 21, 2017 at 12:08 PM

Subject: RE: Weekend follow-up in re our most recent conversation.

To: "hogident@gmail.com" <hogident@gmail.com>

Cc: Randy Blake <RBlake@vbgov.com>, "Justin M. Doyle" <JDoyle@vbgov.com>, "clydekh@yahoo.com" <clydekh@yahoo.com>

Mr. Hogendobler,

I received your voice message and returned your phone call; however, your voicemail is full and I was unable to leave you a message. I spoke with Mr. Blake this morning and I received a copy of an email from your father (below) from Tuesday at 5:22 pm indicating that you were physically unable to meet with staff today. I am sorry to learn that you are

encountering health issues, and I hope that you recover in a timely manner. You stated that my staff canceled an appointment with you today; however, I see no indication of that.

It is my understanding that the same issues you were cited for this year existed last year as well. Action must be taken to eliminate these code violations and to prevent them from reoccurring in the future. As a home owner, you are obligated to ensure that your property is kept free of code violations and properly maintained. If you are unable to perform work on your property yourself, I encourage you to consult with a contractor or to request assistance from family members, friends or volunteer groups to bring your property into full compliance.

I have reviewed your case information and determined that in addition to the notice of violation issued to you for stagnant water in the swimming pool, an additional notice of violation should be issued to ensure that the pool and associated equipment is properly repaired and operational. Section 303.1 of the Virginia Maintenance Code states:

303.1 Swimming pools.

Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.

Good repair means that the swimming pool structure itself must be in good condition and that all equipment (i.e.: filtration, pump and electrical system) associated with the swimming pool must be operational. Otherwise, swimming pools are required to be filled in and the associated equipment removed in an approved, permitted manner. The use of mosquito treatments does not achieve compliance with the codes as it does not keep the pool clean and sanitary. The filtration system, along with regular chemical applications, is what keeps a pool clean and eliminates the need for pest treatments.

You mentioned that you planned to drive around the city today looking for overgrown properties. We encourage residents to forward addresses of properties with potential code violations to us via email at HouseNP@vbgov.com or via phone at 385-4421. This is helpful to us in locating and promptly addressing code violations.

Thank You

Wells Freed, CBO
Housing Code Administrator
City of Virginia Beach
Department of Housing and Neighborhood Preservation
Desk (757)385-5722
Fax (757)385-5694
wfreed@vbgov.com

From: Randy Blake
Sent: Wednesday, June 21, 2017 10:31 AM
To: Wells Freed
Subject: FW: Weekend follow-up in re our most recent conversation.

Wells,

FYI

Randy

Randy Blake
Code Enforcement Supervisor
2nd Precinct
Office (757) 385-1276
Cell (757) 373-4883
Fax (757) 385-5694
rblake@vbgov.com

From: Clyde Ken (Hogie) Hogendobler [mailto:clydekh@yahoo.com]
Sent: Tuesday, June 20, 2017 5:22 PM
To: Randy Blake <RBlake@vbgov.com>
Subject: Re: Weekend follow-up in re our most recent conversation.

Randy,

Relative to the second paragraph of your email below, **why haven't you recommended Mosquito Dunks manufactured by the Summit Chemical Co?** Their rep told me that cognizant Virginia Beach authorities are well aware of the 100% effectiveness and safety of their product. Since my son is unable to walk, wear socks or shoes, transport himself, and is heavily sedated with pain killers, because of open sores on his feet that won't heal, he depends 100% on his family for survival, there is no physical way he can install a fountain (which will not work in this situation due to clogging), or have it pumped out since he has no income and has used up all of his savings on expenses, and, a failed medical system that has been unable to cure his feet, and, he has been turned down for disability benefits. His situation began in April of 2015 and has degraded to his current state. I have calculated the surface square feet of surface water and applied the Dunks this afternoon. Matt is bed ridden and can't walk today. His Doctor (as such) has ordered him to remain prone with feet elevated above the heard. This is how he spends about 90% of his time. A rapid response is requested.

Regards
Clyde (Ken) sends

From: Randy Blake <RBlake@vbgov.com>
To: Dr. Matt . <hogident@gmail.com>; Justin M. Doyle <JDoyle@vbgov.com>
Cc: Russell Dawley <RDawley@vbgov.com>; Clyde Ken (Hogie) Hogendobler <clydekh@yahoo.com>; Dr. Matt <drmattsoffice@yahoo.com>; Wells Freed <WFreed@vbgov.com>
Sent: Monday, June 19, 2017 10:03 AM
Subject: RE: Weekend follow-up in re our most recent conversation.

Dr. Matt,

Our only concerns are the code violations. We as Code Enforcement are not concerned with the fox situation. However the code violations being abated will help with the harborage provided by the overgrowth.

For the abatement, we are only requiring that you cut and maintain the grass and weeds on the property as well as the stagnant water in the pool. The pool needs to be drained or have a circulating system to prevent stagnant water and the breeding of mosquitos. It is totally up to you on how to choose to maintain it.

As I mentioned in our phone conversation we will be adhering to the time frames stated in the notice of violation. The next step will be a summons to go to General District Court.

Our hopes are that the abatement takes place and maintaining the yard will be ongoing.

We would really like to meet you there to point out what needs be done exactly.

Thank You

Randy Blake
Code Enforcement Supervisor
2nd Precinct
Office [\(757\) 385-1276](tel:(757)385-1276)
Cell [\(757\) 373-4883](tel:(757)373-4883)
Fax [\(757\) 385-5694](tel:(757)385-5694)
rblake@vbgov.com



Dr. Matt . <hogident@gmail.com>

RE: Time-sensitive response requested by tomorrow

1 message

Cheri B. Hainer <CHainer@vbgov.com>

Thu, Oct 12, 2017 at 5:27 PM

To: "Dr. Matt Hogendobler" <hogident@gmail.com>, Tobias Eisenlohr <teisenlo@vbgov.com>

Cc: Wells Freed <WFreed@vbgov.com>, Dave Hansen <DHansen@vbgov.com>, Stuart Nesbit <jstuartnesbit@gmail.com>, "Clyde Ken (Hogie) Hogendobler" <clydekh@yahoo.com>, Randy Blake <RBlake@vbgov.com>, "Andrew M. Friedman" <AFriedma@vbgov.com>, Barry Frankenfield <bfranken@vbgov.com>, Tom Leahy <TLeahy@vbgov.com>, "Justin M. Doyle" <JDoyle@vbgov.com>, Mark Stiles <MStiles@vbgov.com>, "Beverly K. Wilson" <BKWilson@vbgov.com>, "William D. Sessoms" <WSessoms@vbgov.com>, "Shannon DS. Kane" <SKane@vbgov.com>, Rosemary Wilson <rawilson31@gmail.com>, "Dr. Matt" <drmattsoffice@yahoo.com>, "Skip Harper (DHCD)" <skip.harper@dhcd.virginia.gov>, "Jeff Brown (DHCD)" <jeff.brown@dhcd.virginia.gov>, "Cindy Davis (DHCD)" <cindy.davis@dhcd.virginia.gov>, Virginia State Building Codes Office <sbco@dhcd.virginia.gov>, "Vernon Hodge (DHCD)" <vernon.hodge@dhcd.virginia.gov>

In accordance with Section 103.2 and 103.3 of the Virginia Uniform Statewide Building Code (USBC), a building or structure is allowed to be occupied and used as intended when constructed without meeting any provision of future codes unless there is a change in the use, level of activity or occupancy that triggers compliance with the new use. USBC Section 108.1 states a permit is required for a change of use.

Our records indicate the pool at 2209 N lakeside Drive was constructed in 1977, in accordance with the provision of the 1975 USBC. It has been brought to the City's attention that the pool is no longer capable of being used as a residential swimming pool, and thus was cited for improper maintenance of the pool per Section 303 of the Virginia Maintenance Code (VMC).

In cooperation with the City Attorney's office and Housing and Neighborhood Preservation, three (3) remedies to address this situation have been offered;

- 1) Comply with the VMC notice of violation and return the structure to an operable status as a swimming pool
- 2) Appeal the VMC notice of violation
- 3) Apply for a building permit to officially change the structure to a pond in accordance with industry standards as allowed in USBC Sections 106.3, 112.2 and 112.3

It is my understanding an appeal date is set for 10/25/17. No other action is required until there is a determination from the Building Maintenance Board of Appeals.

Cheri B. Hainer

Permits and Inspections Administrator

2405 Courthouse Drive Bldg 2 Room 100

Virginia Beach, VA 23456

757.385.4211#3

BOARD OF BUILDING CODE APPEALS,
Property Maintenance ~~III~~ **DIVISION**
RESOLUTION

WHEREAS, the City of Virginia Beach Board of Building Code Appeals, Property Maintenance Division is duly appointed to resolve disputes arising out of the enforcement and interpretation of the Virginia Building Code (Virginia Uniform Statewide Building Code, Part ~~I~~, ^{III Property Maintenance} ~~New Construction~~); and

WHEREAS, an appeal has been filed and brought to the attention of the Board by Mattew Hogendobler in regard to the violations for a structure located at ~~Fire Protection Conference Room~~ Building 21, Virginia Beach, Virginia; and

2209 N. Lakeside Dr.
WHEREAS, a hearing has been held on October 25, 2017 to consider the aforementioned appeal; and

WHEREAS, the Board has fully deliberated this matter.

THEREFORE, be it RESOLVED, that in the matter of Hogendobler and the violations for the structure located at 2209 N. Lakeside Dr.:

The appeal is hereby

-denied and the decision of the Building Code Official is upheld, OR

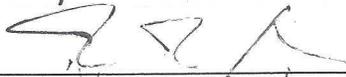
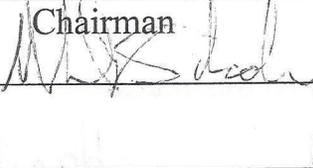
-approved and the decision of the Building Code Official is overturned OR

-neither approved nor denied, but the decision of the Building Code Official is modified as follows:

For the reasons set out below:

- Appeal not timely filed
- Presentation of OHNP ~~and~~ supports issuing NOV

Date: 10/25/17

Signature: 
Chairman


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

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

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

J. MATTHEW HOGENDOBLER, DMD

2209 N LAKESIDE DRIVE, VIRGINIA BEACH, VIRGINIA 23454

757-618-1001 hogident@gmail.com

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

A W FREED, 2424 COURTHOUSE DR BLDG 18A, VIRGINIA BEACH, 23456, 757-385-5722, wfreed@vbgov.com

J M DOYLE, 2424 COURTHOUSE DR BLDG 18A, VIRGINIA BEACH 23456, 757-373-4879, jdoyle@vbgov.com

R BLAKE, 2424 COURTHOUSE DR BLDG 18A, VIRGINIA BEACH 23456, 757-386-1276, rblake@vbgov.com [1] [2]

Additional Information (to be submitted with this application)

- o Copy of enforcement decision being appealed
- o Copy of record and decision of local government appeals board (if applicable and available)
- o Statement of specific relief sought

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of November, 2017, 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: J MATTHEW HOGENDOBLER, DMD

(please print or type)

[1] C B HAINER, 2405 COURTHOUSE DR, BLDG 2, ROOM 100, VIRGINIA BEACH 23456, 757-385-4211, chainer@vbgov.com

[2] T L EISENLOHR, 2401 COURTHOUSE DR. BLDG 1, VIRGINIA BEACH 23456, 757-385-4531, teisenlo@vbgov.com

COPY OF ENFORCEMENT DECISION BEING APPEALED
DELIVERED VIA EMAIL FROM CODE OFFICIAL'S LEGAL COUNSEL

(Appended below is an exact copy of the aforementioned email; however, I would prefer simply to forward the actual email, primarily to preserve integrity of the evidence. Please advise if it would be an acceptable alternative.)

From: **Tobias Eisenlohr** <teisenlo@vbgov.com>
Date: Wed, Aug 16, 2017 at 12:01 PM
Subject: Pool Violations
To: "Dr. Matt" <hogident@gmail.com>
Cc: Wells Freed <WFreed@vbgov.com>, "Justin M. Doyle" <JDoyle@vbgov.com>, Randy Blake <RBlake@vbgov.com>

Dr. Hogendobler,

The letter you submitted does not constitute a plan for removal. It does not have a timeline or indicia of real actions you have taken to remedy the violations. Therefore, the City will initiate court action against you. You will be receiving two summonses for the noticed violations. We will request a court date no less than forty-five days from the magistrate's issuance of the summonses.

However, the city will ask for the charges to be dismissed if you complete one the following prior to your court date:

- Restore the pool to full compliance with the Virginia Property Maintenance Code.
- Legally convert the pool into a pond, including obtaining all necessary permits and a successful final inspection from the City's Planning Department, Permits & Inspections Division
- Legally demolish or fill in the pool.

Tobias L. Eisenlohr
Assistant City Attorney
Office of the City Attorney
City of Virginia Beach
Municipal Center-Building 1
2401 Courthouse Drive
Virginia Beach, VA 23456
757-385-4531 (Office)
757-385-8200 (Direct)
757-385-5687 (Fax)
teisenlo@vbgov.com

COPY OF RECORD AND DECISION OF LOCAL GOVERNMENT APPEALS BOARD

(A RECORD OF THE "APPEAL MEETING" WAS NOT MADE AVAILABLE TO ME, BUT TRUE COPIES OF "THE BOARD" RESOLUTION AND PROOF OF DELIVERY APPEAR ON THE FOLLOWING FOUR PAGES.)

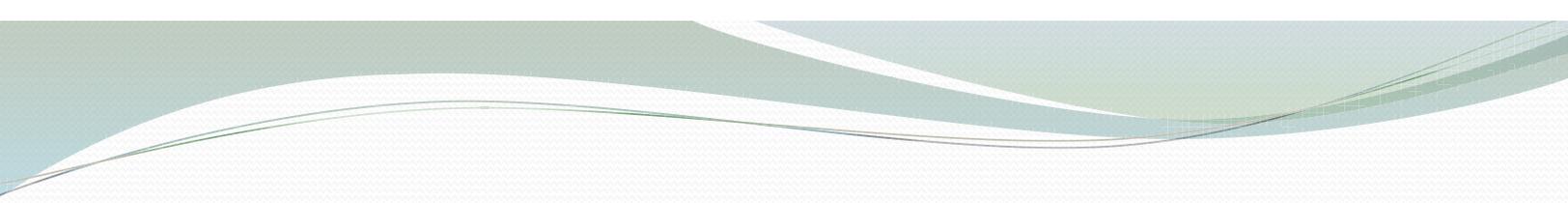
Documents Submitted
By the City of Virginia Beach

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Department of Housing and Neighborhood Preservation

Meeting of the Local Board of Building Code Appeals,
Building Maintenance Division

October 25, 2017, 3:00 PM
Fire Prevention Conference Room
Municipal Center, Bldg 21



Welcome and Introductions

Local Board of Building Code Appeals (LBBCA) Members:

- Ruth Bell
- Thomas Atherton, III
- Jimmie Koch
- Morton Savell
- Michael Schooley

City Representatives:

- Tobias Eisenlohr, Assistant City Attorney
- Cheri Hainer, Permits and Inspections Administrator
- Wells Freed, DHNP Housing Code Administrator
- Jessica Sanchez, DHNP Administrative Specialist II
- Justin Doyle, DHNP Code Inspector I
- Randy Blake, DHNP Code Supervisor



Appointment of a Secretary

- Jessica Sanchez has been appointed as the Secretary
- Maintain a detailed record of the proceedings

Appointment of a Board Chairman

Chairman's responsibilities

1. Direct meetings
2. Rule upon the acceptance of evidence
3. Oversee proceeding records
4. Sign the LBBCA's decision record

Code Enforcement Summary

- Twenty code inspectors who investigate complaints and proactively cite code violations during patrol inspections of their assigned zones
- Enforce Part III of the Uniform Statewide Building Code entitled the Virginia Maintenance Code (VMC)
- VMC specifies the maintenance requirements for the interior and exterior of existing structures
- Inspectors issue notices of violation and inspection reports which describe code violations and specify deadlines for compliance
- Any person aggrieved by the city's application of the VMC or a refusal to grant a modification to the code may appeal to the LBBCA
- Follow-up inspections are conducted to determine if violations have been corrected
- Court action is initiated for non-compliant cases

Packet of Information

Page(s)	Item
3 – 4	Exerts from the 2012 Virginia Maintenance Code Governing Appeals to the Local Board
5	Notice of Building Code Violation
6	Exterior Inspection Report
7 – 11	Application for Appeal to the LBBCA – Matthew Hogendobler
12 – 14	Photos of Swimming Pool located at 2209 N. Lakeside Drive

Right of Appeal

Prior to reviewing the merits of any appeal, the Board must vote to determine if the application was submitted in compliance with the code and if an appeal hearing is warranted:

106.5 Right of appeal; filing of appeal application. (Pages 3- 5)

Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA. **The applicant shall submit a written request for appeal to the LBBCA within 14 calendar days of the receipt of the decision being appealed.** The application shall contain the name and address of the owner of the building or structure and, in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. **Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision.**

Case Summary

- A complaint was received in May
- Several inspections of the property were conducted
- A Notice of Building Code Violation and Exterior Inspection Report for a swimming pool in disrepair were mailed to the property owner, Matthew Hogendobler, on **June 26, 2017**, at 2209 N. Lakeside Dr. (Pages 5 – 6)

Timeline

- Letters were mailed through the USPS via First Class Mail which takes 1 – 3 days to arrive
- Letters were not returned to the city to indicate that there was an issue with delivery
- Mr. Hogendobler submitted an appeal application on **August 29, 2017** (Pages 7 – 11) – approximately 60 days after the letters were delivered
- The city’s position is that the application was not filed within the time limit established in the code and that an appeal hearing is not warranted

Vote on Right of Appeal

- The Board must vote to determine if an appeal is warranted
- Should the Board determine that the application was not submitted within the timeframe required in the code, the decision will be recorded and the meeting adjourned
- The applicant will have the option to appeal this decision to the State Review Board
- Should the Board determine that a hearing is warranted, we will proceed with the remaining portions of this presentation



Appeal of VMC Section 303.1 – Swimming Pools

303.1 Swimming Pools

2012 Virginia Maintenance Code Section

“303.1 Swimming pools:

Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.”

Exterior Inspection Report (Page 7) States:

- “Pools shall be maintained in a clean and sanitary condition, and in good repair.”
- “Pool liner is ripped and is in disrepair.”
- “Pool pump and filter must be operational.”











Vote on Decision

The Board must vote to determine if the city's application of the code regarding a swimming pool in disrepair should be:

1. Upheld
2. Reversed
or
3. Modified

The Board's decision this will be recorded, signed by the Chairman and the meeting adjourned



Thank you!

Department of Housing and Neighborhood Preservation
Code Enforcement Division

Meeting of the Local Board of Building Code Appeals, Building Maintenance Division

October 25, 2017, 3:00 PM
FIRE PREVENTION CONFERENCE ROOM
MUNICIPAL CENTER, BLDG 21

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12 – 14	Photos of Swimming Pool located at 2209 N. Lakeside Drive

2012 VIRGINIA MAINTENANCE CODE SECTION 106 APPEALS

106.1 Establishment of appeals board.

In accordance with Section 36-105 of the Code of Virginia, there shall be established within each local enforcing agency a Local Board of Building Code Appeals (LBBCA). Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. The LBBCA for hearing appeals under the VCC shall be permitted to serve as the appeals board required by this section. The locality is responsible for maintaining a duly constituted LBBCA prepared to hear appeals within the time limits established in this section. The LBBCA shall meet as necessary to assure a duly constituted board, appoint officers as necessary, and receive such training on the code as may be appropriate or necessary from staff of the locality.

106.2 Membership of board.

The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

106.3 Officers and qualifications of members.

The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA.

106.4 Conduct of members.

No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (Section 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

106.5 Right of appeal; filing of appeal application.

Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 14 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and, in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked

by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision.

106.6 Meetings and postponements.

The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a period of up to 45 calendar days shall be permitted where the LBBCA has regularly scheduled monthly meetings. A longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing, except that a lesser time period shall be permitted if agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

106.7 Hearings and decision.

All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the code official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be by resolution signed by the chairman and retained as part of the record of the appeal. Copies of the resolution shall be sent to all parties by certified mail. In addition, the resolution shall contain the following wording:

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

106.8 Appeals to the State Review Board.

After final determination by the LBBCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with Section 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the code official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the code official's decision. For appeals from a LBBCA, a copy of the code official's decision and the resolution of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the Office of the State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the code official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (Section 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no further appeal is made.

Notice of Building Code Violation

JUN 26 2017

17-06-PBM-13674



City of Virginia Beach

DEPARTMENT OF HOUSING AND NEIGHBORHOOD PRESERVATION

CODE ENFORCEMENT DIVISION
MUNICIPAL CENTER
BUILDING 18A
2424 COURTHOUSE DRIVE
VIRGINIA BEACH VA, 23456-9083
(757) 385-4421
FAX (757) 385-5694

HOGENDOBLER J MATTHEW
2209 N LAKESIDE DR
VIRGINIA BEACH, VA 23454-2017

NOTICE OF BUILDING CODE VIOLATION

The City of Virginia Beach has ordinances in effect that are designed to preserve and enhance neighborhood quality, maintain property values, and ensure safe, decent, and sanitary living conditions are provided. Since violations of these ordinances have a detrimental effect on the appearance and quality of the City's neighborhoods and housing units, your cooperation is requested in complying with this notice.

An inspection of the property identified in the enclosed inspection report revealed that the property is in violation of the Virginia Maintenance Code as adopted by Section 16-3.1 of the City Code. In accordance with Section 104.5.4.2 of the Virginia Maintenance Code, you are hereby notified to correct the violation(s) within the number of days indicated on the enclosed inspection report. Failure to comply with this notice shall result in the appropriate legal proceedings being instituted to obtain compliance.

If there are practical difficulties involved in complying with this request, you may apply to the Code Enforcement Division for an extension in the time allowed to comply. Application for an extension should be in writing, briefly state the reasons for the request, indicate the amount of time needed for compliance, and be sent to the inspector identified below.

Section 106.5 of the Virginia Maintenance Code provides for appeals concerning the application of this code or the refusal to grant a modification to the provisions of this code covering the manner of construction or materials to be used in the erection, alteration, repair or maintenance of a structure. Appeals shall be submitted to the Building Code Board of Appeals within 14 days. Appeals should be addressed to the board, in care of this office.

If this involves an interior violation, or an exterior violation that is not visible from the public right-of-way, please call 757-385-4421 to schedule the re-inspection once the corrections have been made. In case of error, or if you have sold or otherwise disposed of this property, please call the inspector immediately at **Monday through Friday 8:00 A.M. - 4:30 P.M**

Justin Doyle

Code Enforcement Inspector

Exterior Inspection Report

Form No.HCE 48-3 REV.3/06

**YOUR RE-INSPECTION WILL
BE ON: 7-26-17**

JUN 26 2017

Period of correction begins on date stamped.



City of Virginia Beach

DEPARTMENT OF HOUSING AND NEIGHBORHOOD PRESERVATION
CODE ENFORCEMENT DIVISION
MUNICIPAL CENTER
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HOGENDOBLER J MATTHEW
2209 N LAKESIDE DR
VIRGINIA BEACH, VA 23454-2017

EXTERIOR INSPECTION REPORT

CASE NUMBER 17-06-PBM-13674
GPIN 24082709040000
DATE OF INSPECTION 6/22/2017
INSPECTOR Justin Doyle

RE: 2209 N LAKESIDE DR
VIRGINIA BEACH, VA 23454-2017

OWNER NAME HOGENDOBLER J MATTHEW
OWNER ADDRESS 2209 N LAKESIDE DR
VIRGINIA BEACH, VA 23454-2017

CODE	DESCRIPTION	CORRECT VIOLATION WITHIN
303.1 SWIMMING POOLS	Pools shall be maintained in a clean and sanitary condition, and in good repair. Pool liner is ripped and is in disrepair. Pool pump and filter must be operational.	30 day(s)

Application for Appeal

29 August 2017

Dr. J. Matthew Hogendobler
Eastwood Manor House
2209 N. Lakeside Drive
Virginia Beach, Virginia 23454
757-618-1001 hogident@gmail.com

re. Application for Appeal of Code Enforcement Division decisions reported on August 16, 2017

To the members of the Virginia Beach Board of Building Code Appeals:

ARTICLE XXII, Sec. 2-451 of the City's Code of Ordinances identifies as "currently established" the Board of building code appeals and, according to a statement by City Clerk Ruth Hodges Fraser, "the Members on all Divisions of the Board of Building Code of Appeals have served far beyond their limitation of terms... Luckily, since the Board never meets, these persons are willing to continue to serve with their expertise."

If true, the [Building Maintenance Division](#) is comprised of four members: Thomas Atherton III, Ruth Bell, Mrs. Jimmie A. Kock and Morton Savell, the Virginia Maintenance Code (VMC) requirement that the Board be comprised of at least five members, notwithstanding.

Virginia Uniform Statewide Maintenance Code Sec.106.2 states, "The LBBCA (Local Board of Building Code Appeals) shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality."

Supervisor Blake was incorrect, when he wrote that my application for appeal requires me to identify the code official whose decisions I seek to appeal, because Section 106.5 of the VMC actually states, "any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA." While the VMC requires the city to appoint a code official, it does not require any pointing of fingers when submitting an application for appeal.

Virginia Beach Code of Ordinances Sec. 2-432 states, "the department of housing and neighborhood preservation shall, by the code enforcement administrator, perform all of the functions and have all of the powers of the code official as set forth in the Virginia Uniform Statewide Building Code for existing structures" and the Virginia Maintenance Code states "Section 104.1 establishes the requirements for enforcement of this code, [which] shall be carried out by an agency or department designated by the local governing body. (Ord. No. 1921, 10-2-89; Ord. No. 2467, 1-13-98) [N.B. VMC Sec. 104.4 requires jurisdictions enforcing the code "to designate the agency within the local government responsible for such enforcement and appoint a code official." Section 202 defines it as "the official who is charged with the administration and enforcement of this code, or any duly authorized representative" (singular).]

According to VMC Sec. 104.5, *et seq.*, the appointed code official (who, in Virginia Beach, is Code Enforcement Division Administrator Wells Freed), is required to enforce the VMC "as

interpreted by the State Review Board,” issue all necessary notices or orders to ensure compliance with the code, accept responsibility for assuring that those he delegates with such powers carry them out in accordance with the provisions of the code, and is authorized to approve a modification of any provision of the code provided the spirit and intent of the code are observed and public health, welfare and safety are assured, the latter of which I was denied.

VMS Sec. 104.5 states, “The code official shall enforce this code as set out herein and as interpreted by the State Review Board and shall issue all necessary notices or orders to ensure compliance with the code.” Sec. 104.5.1 states, “The code official may delegate powers and duties except where such authority is limited by the local government. When such delegations are made, the code official shall be responsible for assuring that they are carried out in accordance with the provisions of this code.” Sec. 104.5.2 states, “**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.”

Instead, the code official mistakenly maintained his identification of the subject structure as a swimming pool and his misinterpretation of my case record as non-compliant, both of which resulted in the same decision required of an owner of a structure deemed to be unsafe or unfit for human occupancy: **restore or remove**. Neither of his perceptions were true and, as the subject decisions emailed to me on Wednesday, August 16, 2017 confirmed, albeit after initiating legal action, Mr. Freed’s previously unwavering demands, with which I knew better than to agree, were unconscionable and biased. (Mine is viewed as a “high profile” case.)

The term, “Swimming Pool,” is not defined in the VMC; however, according to the last sentence of Sec. 201.3, “Where terms are not defined in this code and are defined in other codes,... terms defined in the VCC shall be used for this code and shall take precedence over other definitions.” According to the [2012 edition of the VCC](#), “Swimming Pool” is defined as “an aquatic vessel as defined in the International Swimming Pool and Spa Code (ISPSC).” The 100-page [ISPSC](#) defines the term by distinguishing public from residential pools, the definition for the latter of which, reads “Any pool **intended for use** which is accessory to a residential setting and available only to the household and its guests. All other pools shall be considered public pools for purposes of this code.” But there is one more factor to consider: the City’s definition, and failing to reconcile the two definitions would be insufficient and, most probably, counterproductive. Like ISPSC, the City’s Code of Ordinances ([Sec. 34-3](#)) distinguishes between residential and public pools; to wit, as follows: “Type 1 swimming pool: Any structure that contains **water over twenty-four (24) inches (610 mm) in depth and which is used, or intended to be used, for swimming or recreational bathing** in connection with an occupancy in residential use group R-3 and which is available only to the family and guests of the householder. This includes residential in-ground, aboveground and on-ground swimming pools, hot tubs and spas. Type 2 swimming pool: Any pool, other than a type 1 swimming pool.” Since the City’s definitions do not contradict those stipulated by the VMC, the most detailed definition (that of the City) prevails.

VMC Sec. 105.1 applies to existing structures which are classified as unsafe or unfit for human occupancy. “All conditions causing such structures to be classified as unsafe or unfit for human occupancy shall be remedied or as an alternative to correcting such conditions, the structure may be vacated and secured against public entry or razed and removed.”

VMC Sec. 202 defines an Unsafe Structure as “an existing structure (i) determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public, (ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely. The same Section defines a Structure Unfit for Human Occupancy as “an existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential equipment, or (ii) the required plumbing and sanitary facilities are inoperable.”

There is no doubt but that the structure is unfit for human occupancy. It has been a pond intended for fauna, like frogs and koi, for nearly a decade, and with a water depth, which varies between 15 and 20 inches. Therefore, it is not, by definition, a swimming pool of any type, since the water is not over twenty-four (24) inches (610 mm) in depth and it is not used, nor intended to be used, for swimming or recreational bathing. As such, and because there are no provisions for ponds in any code books, the Department of Housing and Neighborhood Preservation should have no jurisdiction, whatsoever, over the governance of a residential pond, which has been nearly ten years in the making.

Since it was never inspected, the allegation that the equipment is not operational (defined as “in or ready for use”) is malicious prosecution, like the notices citing me for violations of Sec. 23-50(a): “there exists upon any land or premises within the city, any trash, garbage, refuse, litter or similar substances,” since the allegation is and was completely false, and Sec. 23-50(b): “there exists on any land or premises within the city, any grass, weeds, brush or similar vegetation in excess of ten (10) inches in height,” since the front yard was mowed on the same day and before inspection and the back yard, as a wooded area exempted by Sec. 23-50(f)(11), has for several years had neither grass nor weeds.

With respect to the notice of violations of the VMC, there was no preceding corrective notice; nor was the notice of violation issued in accordance with the requirements of the VMC. Even Mr. Freed’s “official” communication, a single email written in response to my voice mail, my father’s private email and a telephone call from a television station reporter, was replete with demeaning phrases and heavy-handed tactics meant to impress the media at my (and my father’s) expense. (My father did not copy me on his email to Mr. Blake; I read it for the first time when Mr. Freed emailed it to me.) Furthermore, the notice I finally received was by request and via email from the division’s city attorney, and it lacked any reference to the appeals process.

Sec. 104.5.4 states, “Upon findings by the code official that violations of this code exist, the code official shall issue a correction notice or notice of violation to the owner or the person responsible for the maintenance of the structure. Sec. 104.5.4.1 states, “The correction notice shall be a written notice of the defective conditions. The correction notice shall require correction of the violation or violations within a reasonable time unless an emergency condition exists as provided under the unsafe building provisions of Section 105.” Sec. 104.5.4.2 states that, “**If the code official determines there are violations of this code other than those for unsafe structures, unsafe equipment or structures unfit for human occupancy under Section 105, the code official may issue a notice of violation to be communicated promptly in writing to the owner or the person responsible for the maintenance or use of the building or structure in lieu of a correction notice as provided for in Section 104.5.4.1. In addition, the code official shall issue a notice of violation for any uncorrected violation remaining from a correction notice established in Section 104.5.4.1. A notice of violation shall be issued by the code official before initiating legal proceedings unless the conditions violate the unsafe building conditions of Section 105 and the provisions established therein are followed.** The code official shall provide the section numbers to the owner for any code provision cited in the notice of violation. In addition, the notice of violation shall indicate the right of appeal by referencing the appeals section of this code.”

By employing the word “should” in place of “shall,” it was reasonable to construe that Mr. Freed’s intention was to mislead, which he did. Moreover, his message seemed clearly punitive, and I, for one, was shocked that a City employee, particularly one in a position of significant leadership, would set such an example.

I am not shocked anymore. Of the hundreds of emails exchanged with Mr. Freed's staff, only about 20% were reliable or in accordance with the prevailing codes and ordinances; however, I do not hold anyone accountable for that but the one, to which the VMC relegates the responsibility: the code official, Administrator Freed, who chose newly hired Justin Doyle to be the inspector of record. (I would like to see his credentials, as permitted by the VMC.)

According to Sec. 101.6, the provisions of Chapter 1 of the VMC supersede any provisions of Chapters 2–8 of the IPMC, including any provisions of the codes and standards referenced therein, that address the same subject matter and impose differing requirements. It is noteworthy because, according to Sec. 103.2 of Chapter 1, "No provision of this code shall require alterations to be made to an existing building or structure or to equipment unless conditions are present which meet the definition of an unsafe structure or a structure unfit for human occupancy," neither condition of which the Code Enforcement Division believed to have existed or it could not legally have issued me a Notice of Violation only.

VMC Sec. 103.1 states, "This code prescribes regulations for the maintenance of all existing buildings and structures and associated equipment, including regulations for unsafe buildings and structures." Sec. 103.2 states, "Buildings and structures shall be maintained and kept in good repair in accordance with the requirements of this code and when applicable in accordance with the USBC under which such building or structure was constructed. No provision of this code shall require alterations to be made to an existing building or structure or to equipment unless conditions are present which meet the definition of an unsafe structure or a structure unfit for human occupancy."

VMC Sec. 105.2 states, "The code official shall inspect any structure reported or discovered as unsafe or unfit for human habitation and shall prepare a report to be filed in the records of the local enforcing agency and a copy issued to the owner. The report shall include the use of the structure and a description of the nature and extent of any conditions found."

VMC Sec. 105.4 states, "When a structure is determined to be unsafe or unfit for human occupancy by the code official, a written notice of unsafe structure or structure unfit for human occupancy shall be issued by personal service to the owner, the owner's agent or the person in control of such structure. The notice shall specify the corrections necessary to comply with this code, or if the structure is required to be demolished, the notice shall specify the time period within which the demolition must occur. Requirements in Section 104.5.4 for notices of violation are also applicable to notices issued under this section to the extent that any such requirements are not in conflict with the requirements of this section. (Note: Whenever possible, the notice should also be given to any tenants of the affected structure.)"

VMC Sec. 105.5 states, "If the notice is unable to be issued by personal service as required by Section 105.4, then the notice shall be sent by registered or certified mail to the last known address of the responsible party and a copy of the notice shall be posted in a conspicuous place on the premises."

I am hopeful that this, my application for the Board to hear my appeal, will be accepted, and I will be given the opportunity to present the evidence and share the merits of my case.

Thanking you in advance for your anticipated understanding and interest, I am

Respectfully yours,



Dr. Matt Hogendobler

Via email transmission to

Barry Frankenfield, Director
Department of Planning and Community Development

Andrew M. Friedman, City Staff Liaison
Local Board of Building Code Appeals
Department of Housing and Neighborhood Preservation
Code Enforcement Division
2424 Courthouse Drive, Bldg. 18A
Virginia Beach, Virginia 23456

Ruth Hodges Fraser, City Clerk
City of Virginia Beach

Cheri B. Hainer, Administrator
Permits and Inspections Division
2405 Courthouse Drive Bldg 2 Room 100
Virginia Beach, Virginia 23456

Photos of Swimming Pool



11



15



14



13



12

JUN 26 2017

17-06-PBM-13674

City of Virginia Beach

DEPARTMENT OF HOUSING AND NEIGHBORHOOD PRESERVATION



CODE ENFORCEMENT DIVISION

MUNICIPAL CENTER
BUILDING 18A
2424 COURTHOUSE DRIVE
VIRGINIA BEACH VA, 23456-9083
(757) 385-4421
FAX (757) 385-5694

HOGENDOBLER J MATTHEW
2209 N LAKESIDE DR
VIRGINIA BEACH, VA 23454-2017

NOTICE OF BUILDING CODE VIOLATION

The City of Virginia Beach has ordinances in effect that are designed to preserve and enhance neighborhood quality, maintain property values, and ensure safe, decent, and sanitary living conditions are provided. Since violations of these ordinances have a detrimental effect on the appearance and quality of the City's neighborhoods and housing units, your cooperation is requested in complying with this notice.

An inspection of the property identified in the enclosed inspection report revealed that the property is in violation of the Virginia Maintenance Code as adopted by Section 16-3.1 of the City Code. In accordance with Section 104.5.4.2 of the Virginia Maintenance Code, you are hereby notified to correct the violation(s) within the number of days indicated on the enclosed inspection report. Failure to comply with this notice shall result in the appropriate legal proceedings being instituted to obtain compliance.

If there are practical difficulties involved in complying with this request, you may apply to the Code Enforcement Division for an extension in the time allowed to comply. Application for an extension should be in writing, briefly state the reasons for the request, indicate the amount of time needed for compliance, and be sent to the inspector identified below.

Section 106.5 of the Virginia Maintenance Code provides for appeals concerning the application of this code or the refusal to grant a modification to the provisions of this code covering the manner of construction or materials to be used in the erection, alteration, repair or maintenance of a structure. Appeals shall be submitted to the Building Code Board of Appeals within 14 days. Appeals should be addressed to the board, in care of this office.

If this involves an interior violation, or an exterior violation that is not visible from the public right-of-way, please call 757-385-4421 to schedule the re-inspection once the corrections have been made. In case of error, or if you have sold or otherwise disposed of this property, please call the inspector immediately at **Monday through Friday 8:00 A.M. - 4:30 P.M**

Justin Doyle

Code Enforcement Inspector

YOUR RE-INSPECTION WILL
BE ON: 7-26-17

JUN 26 2017

Period of correction begins on date stamped.



City of Virginia Beach

DEPARTMENT OF HOUSING AND NEIGHBORHOOD PRESERVATION
CODE ENFORCEMENT DIVISION
MUNICIPAL CENTER
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HOGENDOBLER J MATTHEW
2209 N LAKESIDE DR
VIRGINIA BEACH, VA 23454-2017

EXTERIOR INSPECTION REPORT

CASE NUMBER 17-06-PBM-13674
GPIN 24082709040000
DATE OF INSPECTION 6/22/2017
INSPECTOR Justin Doyle

RE: 2209 N LAKESIDE DR
VIRGINIA BEACH, VA 23454-2017

OWNER NAME HOGENDOBLER J MATTHEW
OWNER ADDRESS 2209 N LAKESIDE DR
VIRGINIA BEACH, VA 23454-2017

CODE	DESCRIPTION	CORRECT VIOLATION WITHIN
303.1 SWIMMING POOLS	<p>Pools shall be maintained in a clean and sanitary condition, and in good repair.</p> <p>Pool liner is ripped and is in disrepair.</p> <p>Pool pump and filter must be operational.</p>	30 day(s)

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Code Provisions,
Prior Review Board Decisions,
and Attorney General's Opinion

(Page left blank intentionally)

may be requested to institute appropriate action against the property owner to recover the costs associated with any such emergency repairs or demolition and every such charge that remains unpaid shall constitute a lien against the property on which the emergency repairs or demolition were made and shall be enforceable in the same manner as provided in Articles 3 (§ 58.1-3490 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1 of the Code of Virginia. ¶

Note: Code officials and local governing bodies should be aware that other statutes and court decisions may impact on matters relating to demolition, in particular whether newspaper publication is required if the owner cannot be located and whether the demolition order must be delayed until the owner has been given the opportunity for a hearing. In addition, historic building demolition may be prevented by authority granted to local historic review boards in accordance with § 15.2-2306 of the Code of Virginia unless determined necessary by the code official. ¶

105.10 Closing of streets. When necessary for public safety, the code official shall be permitted to order the temporary closing of sidewalks, streets, public ways or premises adjacent to unsafe or unfit structures and prohibit the use of such spaces. ¶

SECTION 106 APPEALS

106.1 Establishment of appeals board. In accordance with § 36-105 of the Code of Virginia, there shall be established within each local enforcing agency a LBBCA. Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. The LBBCA for hearing appeals under the VCC shall be permitted to serve as the appeals board required by this section. The locality is responsible for maintaining a duly constituted LBBCA prepared to hear appeals within the time limits established in this section. The LBBCA shall meet as necessary to assure a duly constituted board, appoint officers as necessary, and receive such training on the code as may be appropriate or necessary from staff of the locality. ¶

106.2 Membership of board. The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current

membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period. ¶

106.3 Officers and qualifications of members. The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA. ¶

106.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings. ¶

106.5 Right of appeal; filing of appeal application. Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 14 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and, in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision. ¶

106.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a period of up to 45 calendar days shall be permitted where the LBBCA has regularly scheduled monthly meetings. A longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar

erected and maintained on the roof of any building without a building permit. Such a structure, however, shall not be erected so as to injure the roof covering and when removed from the roof, the roof covering shall be repaired to maintain weather and water tightness. The installation shall not be erected nearer to the lot line than the total height of the antennae structure, nor shall such structure be installed near electric power lines or encroach upon any street or other public space.

427.2 Permits required: The approval of the building official shall be secured for all antennae structures more than twelve (12) feet in height. The application shall be accompanied by detailed drawings of the structure and methods of anchorage. All connections to the roof structure must be properly flashed to maintain water tightness. The design and materials of construction shall comply with the requirements of Section 426.3 for character, quality, and minimum dimensions.

427.3 Electric grounding: All wiring shall comply with the requirements of Article 15 and the antennae shall be grounded either by direct copper ground or through a resistance coil in the circuit.

SECTION 428.0 SWIMMING POOLS

428.1 General: Pools used for swimming or bathing shall be in conformity with the requirements of this section, provided, however, these regulations shall not be applicable to any such pool less than twenty-four (24) inches deep or having a surface area less than two-hundred and fifty (250) square feet, except when such pools are permanently equipped with a water recirculating system or involve structural materials. For purposes of this code, pools are classified as private swimming pools or public and semi-public swimming pools, as defined in Section 428.2.

Materials and constructions used in swimming pools shall comply with the applicable requirements of this code. Pools used for swimming or bathing and their equipment or accessories which are constructed, installed and maintained in accordance with the applicable standards listed in Appendix B, shall be deemed to conform to the requirements of this code, provided the requirements of Section 428.8 are included in the installation.

428.2 Classification of pools: Any constructed pool which is used, or intended to be used, as a swimming pool in connection with a single family residence and available only to the family of the householder and his private guests shall be classified as a private swimming pool. Any swimming pool other than a private swimming pool shall be classified as a public or semi-public swimming pool.

428.3 Plans and permits

428.3.1 Permits: A swimming pool or appurtenances thereto shall not be constructed, installed, enlarged or altered until a permit has been ob-

SPECIAL USE AND OCCUPANCY REQUIREMENTS

tained from the building official. The approval of all city, county and state authorities having jurisdiction over swimming pools shall be obtained before applying to the building official for a permit. Certified copies of these approvals shall be filed as part of the supporting data for the application for the permit.

428.3.2 Plans: Plans shall accurately show dimensions and construction of pool and appurtenances and properly established distances to lot lines, buildings, walks and fences; details of water supply system, drainage and water disposal systems, and all appurtenances pertaining to the swimming pool. Detail plans of structures, vertical elevations, and sections through the pool showing depth shall be included.

428.4 Locations: Private swimming pools shall not encroach on any front or side yard required by this code, or the governing zoning law, except by specific rules of the jurisdiction in which it may be located. A wall of a swimming pool shall not be located less than six (6) feet from any rear or side property line or ten (10) feet from any street property line, except by specific rules of the jurisdiction in which it may be located.

428.5 Design and construction

428.5.1 Structural design: The pool structure shall be engineered and designed to withstand the expected forces to which it will be subjected.

428.5.2 Wall slopes: To a depth up to five (5) feet from the top, the wall slope shall not be more than two (2) feet horizontal in five (5) feet vertical.

428.5.3 Floor slopes: The slope of the floor on the shallow side of transition point shall not exceed one (1) foot vertical to seven (7) feet horizontal. The transition point between shallow and deep water shall not be more than five (5) feet deep.

428.5.4 Surface cleaning: All swimming pools shall be provided with a recirculating skimming device or overflow gutters to remove scum and foreign matter from the surface of the water. Where skimmers are used there shall be at least one (1) skimming device for each one thousand (1,000) square feet of surface area or fraction thereof. Where overflow gutters are used they shall be not less than three (3) inches deep, pitched one-quarter ($\frac{1}{4}$) inch per foot to drains, and constructed so they are safe, cleanable and that matter entering the gutters will not be washed out by a sudden surge of entering water.

428.5.5 Walkways: All public or semi-public swimming pools shall have walkways not less than four (4) feet in width extending entirely around the pool. Where curbs or sidewalks are used around any swimming pool they shall have a non-slip surface for a width of not less than one (1) foot at the edge of the pool and shall be so arranged to prevent return of surface water to the pool.

428.5.6 Steps and ladders: One (1) or more means of egress shall be provided from the pool. Treads of steps or ladders shall have non-slip surfaces and handrails on both sides, except that handrails may be omitted when there are not more than four (4) steps or when they extend the full width of the side or end of the pool.

428.6 Water supply, treatment and drainage systems

428.6.1 Water supply: All swimming pools shall be provided with a potable water supply, free of cross-connections with the pool or its equipment.

428.6.2 Water treatment: Public and semi-public swimming pools shall be designed and installed so that there is a pool water turnover at least once every eight (8) hours. Filters shall not filter water at a rate in excess of three (3) gallons per minute per square foot of surface area. The treatment system shall be so designed and installed to provide in the water, at all times when the pool is in use, excess chlorine of not less than four-tenths (0.4) parts per million (ppm) or more than six-tenths (0.6) ppm, or excess chloramine between seven-tenths (0.7) and one (1.0) ppm, or disinfection may be provided by other approved means. Acidity-alkalinity of the pool water shall not be below seven (7.0) or more than seven and one-half (7.5). All recirculation systems shall be provided with an approved hair and lint strainer installed in the system ahead of the pump.

Private swimming pools shall be designed and installed so that there is a pool water turnover at least once every eighteen (18) hours. Filters shall not filter water at a rate in excess of five (5) gallons per minute per square foot of surface area. The pool owner shall be instructed in proper care and maintenance of the pool, by the supplier or builder, including the use of high test calcium hypochlorite (dry chlorine) or sodium hypochlorite (liquid chlorine) or equally effective germicide and algacide and the importance of proper pH (alkalinity and acidity) control.

428.6.3 Drainage systems: The swimming pool and equipment shall be equipped to be completely emptied of water and the discharged water shall be disposed of in an approved manner that will not create a nuisance to adjoining property.

428.7 Appurtenant structures and accessories

428.7.1 Appurtenant structures: All appurtenant structures, installations, and equipment, such as showers, dressing rooms, equipment houses or other buildings and structures, including plumbing, heating, and air conditioning, amongst others appurtenant to a swimming pool, shall comply with all applicable requirements of this code and the zoning law.

428.7.2 Accessories: All swimming pool accessories shall be designed, constructed, and installed so as not to be a safety hazard. Installations

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SPECIAL USE AND OCCUPANCY REQUIREMENTS

or structures for diving purposes shall be properly anchored to insure stability, and properly designed and located for maximum safety.

428.8 Safety precautions

428.8.1 Electrical safety: The construction and installation of electrical wiring for equipment in or adjacent to swimming pools, to metallic appurtenances in or within five (5) feet of the pool, and to auxiliary equipment such as pumps, filters, and similar equipment shall conform to Article 680 of the National Electrical Code as listed in Appendix B.

428.8.2 Equipment installations: Pumps, filters, and other mechanical and electrical equipment for public and semi-public swimming pools shall be enclosed in such a manner as to be accessible only to authorized persons and not to bathers. Construction and drainage shall be such as to avoid the entrance and accumulation of water in the vicinity of electrical equipment.

428.8.3 Swimming pool safety devices: Every person owning land on which there is situated a swimming pool, fish pond or other body of water which constitutes an obvious hazard and contains twenty-four (24) inches or more of water in depth at any point, shall erect and maintain thereon an adequate enclosure either surrounding the property or pool area, sufficient to make such body of water inaccessible to small children. Such enclosure, including gates therein, must be not less than four (4) feet above the underlying ground; all gates must be self-latching with latches placed four (4) feet above the underlying ground or otherwise made inaccessible from the outside to small children.

A natural barrier, hedge, pool cover or other protective device approved by the governing body may be used so long as the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate and latch described herein.

SECTION 429.0 OPEN PARKING STRUCTURES

429.1 General: Open passenger vehicle parking structures are those structures used for the parking or storage of passenger motor vehicles designed to carry not more than nine (9) persons, and include the following two (2) general types.

1. Ramp type parking structures are those employing a series of continuously rising floors or a series of interconnecting ramps between floors permitting the movement of passenger automobiles under their own power to and from the street level.
2. Mechanical type parking structures are those employing specially designed parking machines, elevators, lifts, conveyors, moving cranes, dollies or other devices for moving passenger automobiles to and from the street level.

For exitway requirements see Section 609.5.

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Betty C. Hill
Appeal No. 08-12

Hearing Date: April 16, 2010

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 the Virginia Uniform Statewide Building Code ("USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Betty C. Hill ("Hill"), owner of an existing home located at 800-26th Place, South, in Arlington County, appeals USBC citations¹ issued by the Arlington County Department of Community Planning, Housing and Development (the "code official").

The code official issued several USBC notices of violation for areas of Hill's house and property in May and June of 2008. Hill appealed the notices to the Arlington County Building Code of Appeals ("County USBC board"). The County USBC board heard Hill's appeal in July of 2008, ruling to uphold some of the citations and overturn others. One citation was rescinded by the code official prior to the hearing by the County USBC board.

Hill then further appealed to the Review Board. Review Board staff conducted an informal fact-finding conference attended by Hill and the code official to determine which citations were still outstanding and to establish the issues for resolution for the appeal hearing before the Review Board. The code official submitted documentation at the informal fact-finding conference that a number of the citation were rescinded due to either reconsideration by the code official or having been corrected by Hill.

¹The citations were issued pursuant to Part III of the USBC, the Virginia Maintenance Code.

Review Board staff drafted a staff document subsequent to the informal fact-finding conference outlining the particulars in the appeal and suggesting issues for resolution by the Review Board. The staff document was distributed to the parties and an opportunity given for the submittal of objections, corrections or additions to the staff document, the submittal of additional documents for the record in the appeal and the submittal of written arguments by the parties. The appeal hearing before the Review Board was then scheduled.

III. FINDINGS OF THE REVIEW BOARD

There are two outstanding issues appealed by Hill. The first relates to the deterioration of the masonry veneer on the exterior wall forming one side of the garage and the masonry column on the same wall at the garage opening. The second issue is the deterioration of the top of a masonry chimney.

Hill's testimony concerning the deterioration of the exterior wall indicated an acknowledgment that it is in violation of the USBC and Hill only asked for additional time to correct the violation. Hill submitted documents and provided testimony concerning the timeline for repairs to the exterior wall and asked for eighteen (18) months to effect repairs. In addition, documents were submitted evidencing that there is no danger of collapse of the wall or immediate concerns which need

to be addressed. The Review Board finds Hill's timeline for repairs to be reasonable and appropriate. To correlate the proposed timeline with the time elapsing between the appeal hearing and the issuance of this order, the Review Board determines that Hill be given sixteen (16) months from the date of the entering of this final order to effect the necessary repairs to the exterior wall to achieve compliance with the USBC.

With respect to whether the deterioration of the chimney constitutes a violation of the USBC, the Review Board finds that the USBC differentiates between building situations which are cosmetic in nature and those which relate to the continued performance or functioning of a building. Section 103.2 of the USBC states in pertinent part:

103.2 Maintenance requirements. Buildings and structures shall be maintained and kept in good repair in accordance with the requirements of this code and when applicable in accordance with the USBC under which such building or structure was constructed.

This provision establishes that when a building was subject to any edition of the USBC when constructed, the expectation is that the building will continue to comply with the code the building was constructed under. Therefore, if there is an aspect of a building which was not regulated or not required by the code under which a building was constructed, then it is not necessary to maintain that aspect.

Similarly, Section 105.3.1 of the USBC addresses buildings which were constructed prior to the initial edition of the USBC and provides as follows:

105.3.1 Limitation to requirements for retrofitting. In accordance with Section 103.2, this code does not generally provide for requiring the retrofitting of any building or structure. However, conditions may exist in buildings or structures constructed prior to the initial edition of the USBC because of faulty design or construction that constitute a danger to life or health or a serious hazard. Any changes to the design or construction required by the code official under this section shall be only to remedy the serious hazard or danger to life or health and such changes shall not be required to fully comply with the requirements of the Virginia Construction Code applicable to newly constructed buildings or structures.

In accordance with Section 105.3.1, no requirements of the code exceed the requirements for new buildings. Therefore, if there is an aspect of a pre-USBC building which would not be regulated or required in a new building, then there is no expectation for that aspect of the building to have to be maintained.

In Hill's situation, testimony and evidence was submitted substantiating that the deterioration of the chimney was cosmetic only and did not affect the functioning or performance of the chimney. The only problem with the chimney was the slight spalling of several outer bricks on the top course of masonry near the cap of the chimney.

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

In RE: Appeal of Pauline Hamlin
Appeal No. 94-16

Decided JUL 21 1995

STATEMENT OF THE APPEAL

Ms. Pauline Hamlin brings this appeal to the State Building Code Technical Review Board (referred to herein as "the Review Board"). The appeal is of a notice of violation (referred to herein as "the notice") issued by the City of Charlottesville building official (referred to herein as "the code official") under the Uniform Statewide Building Code, Volume II, Building Maintenance Code, 1993 Edition (referred to herein as "the USBC").

The notice is in regard to property located at 2305 Angus Road, in Charlottesville, Virginia. The property is located in a residential area and is of average lot size. There exists on the lot the remaining portion of a single family dwelling which burned a number of years ago and which consists of cinderblock basement walls open at the top. There is also a camper shell, of the typical type which fits into the bed of a pickup truck, supported off of the ground and not attached to any motor vehicle. Several parked automobiles have been on the property at times. The property is wooded with fairly dense undergrowth and is accessed by an unpaved driveway from a residential street.

The notice issued by the code official was first appealed by Ms. Hamlin to the City of Charlottesville Board of Building Code

Appeals (referred to herein as "the local appeals board") which ruled to deny the appeal and to uphold the notice. Ms. Hamlin then filed an appeal with the Review Board.

Time frames for a valid appeal were met and there are no jurisdictional issues to resolve. The issue on appeal is whether to uphold the notice issued by the code official.

FINDINGS OF FACT

1. The notice is dated August 4, 1994 and contains a listing of nine violations. Reference is made in the notice to sections from the BOCA National Property Maintenance Code/1993 (referred to herein as "the BOCA Code"), a nationally recognized model code which is incorporated by reference into the USBC in § 101.1.

2. The code official submitted a letter to the Review Board at the hearing on July 21, 1995 stating that as a result of a reinspection of Ms. Hamlin's property, five of the nine violations were found to be in substantial compliance with the USBC.

3. The remaining violations of the USBC for consideration by the Review Board are restated herein as:

4. CODE: Volume II Building Maintenance - SECTIONS: 304.4 & 303.7
Foundation walls:

VIOLATION: Foundation walls are not maintained free from open cracks and breaks.

7. CODE: Volume II Building Maintenance - SECTIONS: 501.2
Responsibility:

VIOLATION: No person shall use any structure or premises without plumbing facilities for purposes of occupancy.

8. CODE: Volume II Building Maintenance - SECTIONS: 601.2
Responsibility:

VIOLATION: No person shall use any structure or premises without heating facilities for sleeping purposes.

9. CODE: Volume II Building Maintenance - SECTIONS: 602.1
Electrical Facilities

VIOLATION: All premises used for occupancy shall have electrical system.

4. Violation number four in the notice relates to the foundation on the property which has the following characteristics:

- a. Hollow masonry unit walls enclosing an area below grade which extend above ground level and which have openings into the below grade area.
- b. Concrete basement floor with steel posts projecting upwards along the centerline.
- c. No structure above the hollow masonry unit walls.

5. There is agreement between the building official and Ms. Hamlin that there is no occupancy or use of the foundation and that is not an issue in the appeal. Ms. Hamlin states it is her intention to build a house on the existing foundation. The code official did not assert that the camper shell is being used for occupancy and that is not an issue in the appeal.

6. The notice holds that the foundation must be maintained free from open cracks and breaks and references §§ PM-303.7 and PM-304.4 of the BOCA Code. Section PM-303.7 relates to accessory structures and requires that they be maintained structurally sound and in good repair. Section PM-304.4 relates to foundation walls and requires that they be maintained plumb and free from open cracks and breaks and kept in such condition so as to prevent the entry of rats.

7. Violation numbers seven, eight and nine in the notice reference §§ PM-501.2, PM-601.2 and PM-602.1 of the BOCA Code and state that no person shall use any structure or premises for occupancy or sleeping purposes without plumbing and heating facilities and an electrical system.

8. Ms. Hamlin states that she visits the premises at various times to protect it from vandals, but she does not reside there. The code official states he has witnessed occasions where Ms. Hamlin sleeps in her vehicle on the property and in his opinion she lives there.

CONCLUSIONS

1. With respect to violation number four of the notice relating to the basement or foundation walls; pictures submitted and the testimony of those involved evidence that the cracks and breaks in the foundation walls are minor in nature and that the foundation is not in danger of structural collapse.

2. The Review Board determines that the foundation is not an accessory structure within the meaning of § PM-303.7 of the BOCA Code since the walls form a basement that was once part of a house and the use of the term "walls" in the section connote free standing walls, not basement walls. Therefore, the citation to § PM-303.7 of the BOCA Code in violation number four of the notice is invalid.

3. The Review Board further finds that § PM-304.4 of the BOCA Code cited in violation number four of the notice relates to foundations supporting structures and being used within the commonly accepted meaning of the word "foundation."

In as much as the foundation in question is not currently being used as the support for any building or structure, the Review Board finds that the citation to § PM-304.4 of the BOCA Code in violation number four of the notice is also invalid.

4. The Review Board does find, however, that the basement

walls in question in violation number four of the notice form a vacant structure within the meaning of § 105.1 of the USBC.

Section 105.1 states:

"This section shall apply to buildings and their equipment that fail to comply with the Building Maintenance Code through damage, deterioration, infestation, improper maintenance, or for other reasons, and thereby become unsafe, unsanitary, or deficient in adequate exit facilities, or which constitute a hazard or public nuisance, or are otherwise dangerous to human life, health or safety, or the public welfare. All such buildings or other structures declared by the code official to be a public nuisance or unfit for human habitation shall either be: made safe through compliance with this code, or be vacated and secured against public entry, or taken down and removed as determined by the code official. A vacant building, unsecured or open at door or window, may be deemed a fire hazard and unsafe within the meaning of this section."

5. Additionally, in accordance with § 105.1, the Review Board determines that the basement walls and area within, as considered as a vacant structure, are unfit for human habitation and must be secured against public entry.

6. With respect to violation numbers seven, eight and nine, the code official agrees that the basement/foundation area and the camper shell are not being occupied. Therefore, the code official applied the BOCA Code provisions concerning the use of premises, other than structures, for occupancy or sleeping purposes.

7. While the BOCA Code provisions may authorize such regulation, the use of the BOCA Code within the USBC is limited by the scope of the USBC determined by the wording in §§ 36-99 and 36-103 of the Code of Virginia and in §§ 100.5 and 100.10 of the USBC.

8. Sections 100.5 and 100.10 state in pertinent part:

"The Building Maintenance Code shall apply to all buildings and structures as defined in the Uniform Statewide Building Code Law,"

"The purpose of the Building Maintenance Code is to ensure public safety, health and welfare through proper building maintenance and use and continued compliance with minimum standards of building construction, energy conservation, water conservation, and physically handicapped and aged accessibility."

9. Further, the Review Board periodically issues interpretations of the USBC upon request from local building officials as provided in § 36-118 of the Code of Virginia. Review Board interpretation number 8/93 addresses the issue in question and states:

"QUESTION: Are the provisions or portions thereof in the BOCA National Property Maintenance Code relating to premises, as opposed to structures, enforceable as part of Volume II of the USBC.

ANSWER: No, Section 100.5 limits the application of Volume II to buildings and structures only."

10. The Review Board concludes that violation numbers seven, eight and nine of the notice are not applicable to the basement/foundation or camper shell. The Review Board further determines that the definition of structure, as referenced in § 100.5 of the USBC, does not include motor vehicles and that the purpose of the USBC, as set out in § 100.10 of the USBC, does not include regulation of the occupancy on property in motor vehicles. Therefore, violation numbers seven, eight and nine in the notice are inapplicable to the use or occupancy of a motor vehicle on the property.

FINAL ORDER

The appeal having been given due regard and in consideration of the "Findings of Fact" and "Conclusions" set out above, the

Review Board hereby orders that:

1. The decision of the local appeals board to uphold violation number four on the August 4, 1994 notice of violation be, and hereby is, overturned and violation number four be, and hereby is, modified that in accordance with § 105.1 of the USBC, the existing foundation on the property is unfit for human habitation and is to be secured against public entry.

2. The decision of the local appeals board to uphold violation numbers seven, eight and nine on the August 4, 1994 notice of violation be, and hereby is, overturned and violation numbers seven, eight and nine be, and hereby are, held invalid and dismissed.

The appeal is granted in part.



Chairman, State Technical Review Board

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 Norman R. Crumpton, Secretary of the State Building Code Technical 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 Woodbine ACE Hardware
Appeal No. 07-2

Hearing Date: May 18, 2007

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 the Virginia Statewide Fire Prevention Code (the "SFPC") and other regulations of the Department of Housing and Community Development. Enforcement of the SFPC in other than state-owned buildings is by local city, county or town fire prevention departments, when such localities choose to enforce the code. See § 27-98 of the Code of Virginia. An appeal under the SFPC is first heard by a local board of appeals and then may be further appealed to the Review Board. (Ibid.) The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

The owners of Woodbine ACE Hardware (referred to hereinafter as "ACE"), a hardware store located at 13418 Dumfries Road, appeal a decision of the Prince William County Fire Marshal's Office (the "fire official") that, under the SFPC, the storage of materials beneath the roof overhang on the front and side of the building must be protected by a sprinkler system. ACE first appealed the fire official's decision to the Prince William County Board of Fire Prevention Code Appeals (the "local SFPC board"), which upheld the fire official's decision, and then subsequently appealed to the Review Board.

In filings to the Review Board, the fire official raised the issue of whether ACE's appeal to the Review Board was untimely.

III. FINDINGS OF THE REVIEW BOARD

Whether ACE's appeal to the Review Board was untimely.

The provision of the SFPC governing the timeliness of appeals is set out in pertinent part below:

112.9. Appeal to the [Review Board]. After final determination by the [local SFPC board], any person who was a party to the local appeal may appeal to the [Review Board]. Application shall be made to the [Review Board] within 21 calendar days of receipt of the decision to be appealed.

The fire official argues that ACE's receipt of the decision of the local SFPC board occurred on the day the local SFPC board

heard the appeal, which was January 16, 2007, as ACE was present for the local SFPC board's deliberations and ruling. However, the fire official acknowledges that a written decision was sent to ACE by certified mail on that same day (January 16, 2007), but without a return receipt, so the fire official has no record of whether, or when, ACE received the written decision. ACE did correspond to the fire official by facsimile on February 6, 2007, requesting that the local SFPC board's decision be sent to them. The fire official then sent the written decision again to ACE on February 6, 2007. ACE appealed to the Review Board within 21 days of February 6, 2007,¹ but not within 21 days of January 16, 2007; therefore, the fire official's argument that ACE's appeal is not timely hinges on whether hearing the decision orally constitutes the "receipt" of the decision.

The Review Board finds that the common, ordinary meaning of the word "receipt" in the context used in the SFPC connotes the written transferal of a decision as opposed to an oral one. Further, as appeal proceedings are quasi-judicial proceedings, it is well established that decisions in such matters are conveyed via their written orders. Accordingly, there is no basis for the fire official's argument and it is rejected.

¹ While there is some discrepancy concerning whether ACE's application for appeal to the Review Board was properly faxed to and received by the Office of the Review Board within 21 days of February 6, 2007, the fire official did not argue that ACE's appeal was untimely for that reason and ACE did provide a fax transmittal sheet indicating that its application was faxed to the Office of the Review Board on February 23, 2007.

Whether to overturn the fire official's decision that the storage of materials beneath the roof overhang on the front and side of the building must be protected by a sprinkler system.

The fire official relies on § 315.3.1 of the International Fire Code, a nationally recognized model code incorporated by reference into the SFPC, as the basis for the citation against ACE. The provision is set out below:

315.3.1 Storage beneath overhead projections from buildings. Combustible materials stored or displayed outside of buildings that are protected by automatic sprinklers shall not be stored or displayed under nonsprinklered eaves, canopies or other projections or overhangs.

The parties stipulated that the roof overhangs in question are protected by an automatic sprinkler system. The issue is whether the automatic sprinkler system protection must extend below the roof overhangs to protect the storage under the overhangs. Clearly, based on the code section's plain meaning, § 315.3.1 of the SFPC does not require this, therefore, the Review Board finds that ACE is not in violation of § 315.3.1 of the SFPC.

This determination, however, should not be construed as a determination that the storage under the roof overhangs is not in violation of the SFPC, only that it is not in violation of § 315.3.1 of the SFPC. It is within the Review Board's authority to correct a citation under the SFPC and uphold a decision of a fire official that there is a violation of the SFPC concerning a

specific set of circumstances under appeal, even if the fire official cites an incorrect section of the SFPC.

In this case, whether the automatic sprinkler system is required to extend below the roof overhangs if storage is present under the overhang is not governed by the SFPC directly, but by the Virginia Uniform Statewide Building Code (the "USBC") in effect at the time the building was constructed.² Storage not associated with a building, on the other hand, is governed solely by the SFPC, as the USBC only regulates the construction of buildings and structures.

The SFPC, in §§ 102.7 and 102.8, sets out the statutory relationship between the USBC and the SFPC, which may be found in § 36-105.1 of the Code of Virginia. Essentially, these provisions dictate that the sole responsibility for the inspection and approval of buildings under construction is that of the local building department under the USBC. However, when the buildings are completed, the responsibility for fire safety protection passes to the fire official under the SFPC. This means that the fire official has the authority to assure that a building is being used in accordance with the way it was approved under the USBC.

² The initial USBC became effective in 1973. Buildings constructed prior to 1973 would be subject to local building regulations, or if a building was a public building, to local building regulations and the Virginia Fire Safety Regulations, also known as the Virginia Public Building Safety Regulations.

Therefore, if the USBC under which ACE's building was constructed did not permit storage under the roof overhangs without the automatic sprinkler system being extended under the roof overhangs to protect the storage, then ACE would not be permitted to have storage under the overhangs, and any storage placed there would be a violation of the SFPC for not using the building in accordance with the way it was approved under the USBC.

In this case, while evidence was presented by the fire official which indicated that the USBC under which the building was constructed did require the sprinkler system to extend below the roof overhangs to protect the storage, the evidence presented was not conclusive. No records from the local USBC department, no certificate of occupancy under the USBC or record of any modifications requested or approved and no original plans or specifications were presented to indicate whether storage was contemplated or approved under the roof overhangs based on the USBC requirements for sprinkler systems which were in effect at the time of construction.

Therefore, while the Review Board recognizes that storage may not be permissible under the roof overhangs without the sprinkler protection extending under the roof overhangs to protect the storage, the evidence is insufficient for the Review

whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

***Note: The original signed final order is available from Review Board staff.**

Commonwealth of Virginia

File



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ASSISTANT ATTORNEYS GENERAL

January 15, 1976

The Honorable Donald W. Devine
Commonwealth's Attorney
20 East Market Street
Leesburg, Virginia 22075

Dear Mr. Devine:

This is in response to your letter dated December 22, 1975, in which you raise the question as to whether the Uniform Statewide Building Code § 429.83 would apply to a 5.3 acre man-made lake.

§ 429.83 of the Virginia Uniform Statewide Building Code reads as follows:

"Every person owning land on which there is situated a swimming pool, fish pond or other body of water which constitutes an obvious hazard and contains twenty-four (24) inches or more water in depth at any point, shall erect and maintain thereon an adequate enclosure either surrounding the property or pool area, sufficient to make such body of water inaccessible to small children...."

The Uniform Statewide Building Code "proscribe[s] standards to be complied with in the construction of buildings and structures..." § 36-99 of the Code of Virginia (1950), as amended. § 36-97 (18) of the Code defines a structure as "an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, wharves, swimming pools, storage bins, and other structures of this general nature..." Although a 5.3 acre of man-made lake may arguably be included within the definition of structure cited above, it is my opinion that since a man-made lake normally is not constructed of "an assembly of materials...for occupancy or use" and, in addition, is not included within the definition cited above, the Uniform Statewide Building Code does not apply to such a lake. Even though such an open body of water could possibly constitute a hazard, it is my further opinion that regulations requiring enclosures for man-made lakes would be more properly the responsibility of a local governing body under their general police powers. Of course, any structures constructed in conjunction therewith, such as diving towers, bath houses, etc., would be covered under the definitions contained within the Uniform Statewide Building Code.

Donald W. Devine
January 15, 1976
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With regard to your question as to whether this office is recommending a change in the afore said provisions to the General Assembly, I am unaware of any such recommendation at the present time.

I hope this will answer your question satisfactorily. I remain with kindest personal regards,

Sincerely,


Walter L. Penn, III
Assistant Attorney General

5:5/43
cc: Joseph E. Bartell
Virginia Office of Housing