

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Poplar Place Homeowners Association
Appeal No. 14-11

Hearing Date: November 21, 2014

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

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

II. CASE HISTORY

The Poplar Place Homeowners Association (the Association), a homeowners association for a subdivision in McLean on Poplar Place road, through its attorney, appeals the issuance of a notice of violation under the Fire Prevention Code of the County of Fairfax for the lack of a properly designated and marked fire

lane on the subdivision's road. Prior to the appeal to the Review Board, the notice of violation was appealed to the Fairfax County Board of Building Code Appeals (County appeals board), which conducted a hearing and ruled to uphold the issuance of the notice.¹

Review Board staff, in processing the Association's appeal, informed the parties that in prior cases concerning local fire lane issues, the Review Board had determined that it lacked jurisdiction to hear such appeals as the Review Board is only authorized to hear appeals of the application of the Virginia Statewide Fire Prevention Code, not local fire prevention regulations. Further, while there had been a statutory change addressing appeals of local fire prevention regulations, the new law did not appear to give the Review Board jurisdiction to hear an appeal if a local board of appeals had jurisdiction.

Accordingly, the parties were informed that a preliminary hearing would be scheduled before the Review Board to determine whether the Review Board had jurisdiction to hear the Association's appeal.

The preliminary hearing was held and attended by representatives of the Fairfax County Office of the Fire Marshal

¹The County appeals board's ruling stated the appeal was denied without providing a reason; however, the record and testimony confirms that the County appeals board accepted jurisdiction of the appeal, conducted a hearing on the merits of the issuance of the notice of violation and upheld the issuance of the notice as a proper and correct application of the County Fire Prevention Code.

and its legal counsel. Legal counsel for the Association submitted written arguments in lieu of attending the preliminary hearing.

III. FINDINGS OF THE REVIEW BOARD

The current law addressing the Review Board's jurisdiction to hear appeals of the application of local fire prevention regulations, in § 27-98 of the Code of Virginia, states in pertinent part:

"Any local fire code may provide for an appeal to a local board of appeals. If no local board of appeals exists, the State Building Code Technical Review Board shall hear appeals of any local fire code violation."

The Fairfax County Fire Prevention Code, as established in §§ 62-2-7 and 62-2-8 of the Code of the County of Fairfax, states in § 112.1.1 that "[t]he Fairfax County Board of Building Code Appeals is the Local Board of Fire Prevention Code Appeals (BFPCA) for Fairfax County[,]" and in § 112.5.1 that "[a]ppeals arising from the Fire Prevention Code of Fairfax County shall be limited to the factual basis of the application of this code."

The Review Board finds this language sufficient to establish that the County appeals board is duly authorized to hear appeals of local fire code violations and as there is no dispute that the action taken against the Association by the Fairfax County Fire Marshal's Office is action under a local fire code and not under the Virginia Statewide Fire Prevention

Code, the Review Board is not authorized by § 27-98 of the Code of Virginia to hear the Association's appeal.

The Review Board further finds that its basic law, in § 36-114 of the Code of Virginia, does not authorize it to hear appeals of local fire prevention regulations as only the Statewide Fire Prevention Code is referenced in its statutory authority.

Therefore, in this case, the Association's administrative remedy is limited to an appeal to the County appeals board and the Review Board lacks jurisdiction to hear a further appeal from the decision of the County appeals board.

IV. FINAL ORDER

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

/S/

Chairman, State Technical Review Board

March 20, 2015

Date Entered

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Vernon W. Hodge, Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.