

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of International Technology Industry, Inc.
Appeal No. 15-10

Hearing Date: October 16, 2015

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

International Technology Industry, Inc. (ITI), a local business engaged in the wholesale of essential oils, appeals a citation by the Fairfax County Fire Marshal's Office (FCFMO) under the 2012 Virginia Statewide Fire Prevention Code (SFPC).

In March of 2015, the FCFMO, the County agency responsible for the enforcement of the State Fire Prevention Code (SFPC), conducted an inspection of a building owned by ITI, at 8245 Backlick Road, Suites C & D, in Lorton, Virginia. As a result of the inspection, the FCFMO issued a notice of violation to ITI under the 2012 edition of the SFPC regarding Sections 301.2 (Permits), 301.3 (Occupancy), 3201.2 (Construction documents), 5001.5.2 (Hazardous Materials Inventory Statement), and 5003.5 (Hazard identification signs).

2. Later in March of 2015, ITI filed an appeal of the notice to the Fairfax County Board of Building Code Appeals (County appeals board) which conducted a hearing in May of 2015 and ruled to uphold the notice.

3. ITI then further appealed only Sections 301.2, 301.3, and 3201.2 of the SFPC to the Review Board in June of 2015.

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.”¹

The Review Board find this language sufficient to establish that the County appeals board is duly authorized to hear appeals of local fire code violation and as there is no dispute that the action, under Sections 302.1 and 3201.1, taken against ITI 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 ITI’s appeal on Sections 302.1 and 3201.1.

Prior to the start of testimony by either party, the Review Board addressed Section 301.2 (as amended by the Fairfax County Fire Prevention Code) concerning a combustible storage permit. The Review Board 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.

¹ Language excerpted from the final order of the Poplar Place Homeowners Association appeal ; Appeal No. 14-11

Consequently, the Review Board finds that the appeal on Sections 302.1 and 3201.1 is not properly before it.

Moreover, the Review Board finds that the only issue before is whether ITI's current use of its building constitutes a change of occupancy as referenced in Section 301.3 of the SFPC:

"CHANGE OF OCCUPANCY. A change in the purpose or level of activity within a building that involves a change in application of the requirements of this code."

The FCFMO provided testimony that ITI has a non-residential use permit for a separated mixed use Business (B) and Moderate-Hazard Storage (S-1) occupancy, but that ITI exceeded the storage quantities for flammable and combustible liquids for S-1 occupancies in SFPC Table 5003.1.1. For that reason, the FCFMO asserts that ITI has effectuated a change of occupancy.

ITI provided testimony that its building is used for the retail and wholesale business of selling essential oils. ITI also testified that it used Table 5704.3.1 - which applies to Mercantile (Group M) and Storage (Group S) occupancies - to determine the maximum allowable quantities per control area of flammable and combustible liquids in wholesale and retail sales occupancies for its business. The term "Maximum Allowable Quantity per Control Area" is defined in the SFPC as:

"The maximum amount of a hazardous material allowed to be stored or used within a control area inside a building or an outdoor control area. The maximum allowable quantity per

control area is based on the material state (solid, liquid or gas) and the material storage or use conditions.”

The Review Board finds that ITI misapplied Section and Table 5704.3.4.1 of the SFPC for maximum allowable quantities per control area for Mercantile (Group M) occupancies given that its current permitted use classification is Business (B) and Moderate-Hazard Storage (S-1). The appropriate table for the current use of the building is Table 5003.1.1(1).

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the Fairfax County Fire Marshal’s Office issuance of the notice of violation for ITI on Section 301.3 of the SFPC, and the local appeals board’s ratification of the citation, to be, and hereby are, upheld. The Review Board further orders all others aspects of ITI’s appeal to be, and hereby are, dismissed as due to lack of jurisdiction.

_____/s/_____
Chairman, State Technical Review Board

February 19, 2016
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 Alan W. McMahan, 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.