

Virginia:

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

IN RE: Appeal of Peppermill Homes, LLC
Appeal No. 15-19

Hearing Date: May 20, 2016

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 & 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

In October of 2014, Peppermill Homes, LLC (Peppermill) was issued a

building permit to construct a detached single-family dwelling on property it owned at 316 S. Hope Street in Hampton. The permit was issued under Part I of the 2009 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC) by the City of Hampton's Community Development Department (City building department), the agency responsible for the enforcement of the VCC. Subsequently, the City building department issued a certificate of occupancy for the property in February of 2015.

In response to adjacent property owner's complaint about water migration, the City building department conducted an inspection of the property in July of 2015.

As a result of the inspection, the City building department issued a notice of violation to Peppermill for violations of VCC Sections 109.2 (Site Plan) and R401.3 (Drainage) of the 2012 VCC¹ pertaining to the final grading and related surface drainage on the property.

In August of 2015, Southern Chesapeake Realty, acting on behalf of Peppermill, filed an appeal of the notice of violation to the City of Hampton's Building Code Board of Appeals (local appeals board) which heard the appeal in September of 2015 and ruled to uphold the City building department's notice of violation on both citations - VCC Sections 109.2 and R401.3.

¹ Although the effective date of the 2012 VCC was July 14, 2014, Section 103.2 allows permit applicants to choose for a one-year period following the effective date, whether to comply with the provisions of the 2012 VCC or the 2009 VCC. Regardless, the code language in Sections 109.2 and R401.3 did not change between the editions.

The decision was signed and delivered to Peppermill in November of 2015.

Peppermill then further appealed to the Review Board and a hearing was held before the Review Board with Michael Veraldi, a representative of Peppermill; representatives of the City building department and the city's legal counsel; and Robert and Kimberly Vaughn, adjacent property owners, present.

III. FINDINGS OF THE REVIEW BOARD

The first issue under appeal is whether the fact that Peppermill did not provide the City with an as-built site plan (i.e. a grading plan) is a violation of Section 109.2 (Site Plan) of the 2009 VCC which states, in part:

"When determined necessary by the building official, a site plan shall be submitted with the application for a permit [...]. The site plan shall also show [...] the established street grades and the proposed finished grades."

On this matter, both parties agreed that a site plan showing the proposed finished grades for the property was submitted by Peppermill as part of the building permit application. However, the City testified that it later required Peppermill to provide an updated site plan showing the current

grading of the property, claiming that it does not match the proposed finished grades shown on the submitted site plan. The Review Board finds that the language in Section 109.2 clearly allows a local building department to require a site plan with the proposed finished grades as a condition for issuing a building permit. However, the Review Board finds that the same section does not expressly authorize a local building department to require the submission of an "as-built" site plan once the final grading of a property has occurred.

The second issue under appeal is whether the current grading constitutes a violation of VCC Section R401.3 (Drainage) which states, in part:

"Surface drainage shall be diverted to storm sewer conveyance or other approved point of collection that does not create hazard to the dwelling unit. Lots shall be graded to drain surface water away from foundation walls. The grade shall fall a minimum of 6 inches (152 mm) within the first 10 feet (3048 mm)."

On this issue, the City testified that the current grading of the property, as reflected on the as-built site plan, is in violation of Section R401.3 because it directs surface drainage to adjacent properties and not towards a storm sewer conveyance or other approved point of collection as required by the section. In addition, the City asserted the intent of Section R401.3 is to prohibit and prevent surface drainage not only against the foundation of the structure under permit, but also

against adjacent structures. Peppermill testified that the grade behind the home is directed to the rear property line and that the grade along the sides and front of the home is directed towards the storm sewer along the S. Hope Street. The adjacent property owners disagreed stating that the current grading is causing surface water to drain onto their property.

On this matter, the Review Board finds that the "as-built" site plan plainly shows that the final grading of the property directs surface drainage at the rear and sides of the structure towards the rear property line, and at the front of the building, towards S. Hope Street. As a result, the Review Board finds that because the final grading in the rear and side yards of the property does not divert surface drainage to a storm sewer conveyance or another point of collection, it constitutes a violation of Section R401.3.

In its decision, the Review Board did not address the issue of whether the intent of Section R401.3 is to prohibit surface drainage against foundations of adjacent properties.

IV. FINAL ORDER

The appeal hearing has been given due regard, and for the reasons set out herein, the Review Board orders the decision of the City of Hampton building official and the City appeals board to

