

Virginia:

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

IN RE: Appeal of Gregory and Leah Thorpe
 Appeal No. 16-11

Hearing Date: April 21, 2017

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 June of 2015, Gregory and Leah Thorpe (Thorpe) purchased a single-family detached home at 16300 Longlands Road in Chesterfield County from Finer

Homes, Inc. (Finer Homes), a licensed Class A contractor.

In June of 2016, Thorpes contacted the Chesterfield County Building Inspections Office (local code office, or County), the agency responsible for the enforcement of Part I of the 2012 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC) with concerns about potential code violations in their home.

In response, the local code office performed an inspection of Thorpe's home and consequently issued a Letter of Defect to Finer Homes for violations of VCC Sections R303.3 (*Bathrooms*) concerning a bathroom vent; R401.3 (*Drainage*) concerning the slope of the driveway; R802.10.4 (*Alteration to trusses*) on alterations made for the installation of insulation, a window and an HVAC platform; and P2609.2 (*Installation of materials*) on the installation of the master bath tub.

In September of 2016, the local code office issued a second Letter of Defect to Finer Homes to address violations of VCC Sections R502.8.2 (*Engineered wood products*) concerning a notch in the top chord of an engineered wood floor joist; and N1102.4.1 (*Building thermal envelope*) on an unsealed portion of the building envelope.

Concurrently, the local code office issued a Notice of Violation to Finer Homes for violation of VCC Sections R401.3 (*Drainage*) for the lack of slope at the home's concrete driveway; R502.6 (*Bearing*) for the lack of minimum bearing of floor joists at the foundation wall; R802.10.4 (*Alteration to trusses*) for roof trusses altered for the installation of a window and an HVAC platform.

Later in September of 2016, the local code office emailed Thorpe documenting its position on several code issues related to their home.

In response to the email, Thorpe filed an appeal with the Chesterfield County Local Board of Building Code Appeals (local appeals board) in October of 2016 on four issues described in the aforementioned email: 1.) that Section R401.3 does not prohibit the use of a swale beyond ten feet from the building to divert drainage; 2.) that local code office had accepted an engineer's detail on "padding" of the truss bottom chord; 3.) that local code office accepted the cut-out portion of an I-joist as a notch regulated by R502.8.2; 4.) and that the local code office had extended Finer Homes' compliance time for the correction of violations in the August 3, 2016 and September 16, 2016 letters of defect and the September 16, 2016 notice of violation.

The local appeals board heard the appeal in November of 2016 and ruled to uphold the local code office's decision.

Thorpe then filed an application for appeal with the Review Board concerning the three remaining issues.

A staff summary was drafted and distributed to the parties with an opportunity to submit objections, corrections or additions to the staff summary. All documents, written arguments and other correspondence were then compiled as part of an agenda package for a meeting of the Review Board and a hearing was conducted concerning the appeal. The Thorpes; a representative for Finer Homes; and County representatives and their legal counsel were present at the hearing.

III. FINDINGS OF THE REVIEW BOARD

The first issue under appeal concerns surface drainage adjacent to the Thorpe's home as it relates to VCC Section R401.3, which states:

R401.3 Drainage.

Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection that does not create a 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).

Exception: Where lot lines, walls, slopes or other physical barriers prohibit 6 inches (152 mm) of fall within 10 feet (3048 mm), drains or swales shall be constructed to ensure drainage away from the structure. Impervious surfaces within 10 feet (3048 mm) of the building foundation shall be sloped a minimum of 2.0 percent away from the building.

In its September 30, 2016 email addressing several outstanding code issues, the County informed the Thorpes that "Use of a swale or drain is not prohibited per R401.3 to divert the water towards the storm sewer systems once you get beyond 10 feet from the building." This statement is specifically what Thorpe appealed to the local appeals board and then to the Review Board.

On this matter, the Review Board finds that although VCC R401.3 has requirements for diverting surface drainage away from dwelling units, it does not address the management of surface drainage ten feet beyond a building's foundation. For this reason, the Review Board finds no justification for overturning the local code office's decision that the VCC does not prohibit a swale in the

driveway that diverts runoff towards the storm water collection system in the street.

The second issue under appeal concerns the wood roof trusses and whether the addition of the on-edge 2"x6" framing, or padding, on top of the bottom chords of the engineered trusses represents an alteration consistent with VCC Section R802.10.4; and if so, was the alteration done in accordance with that section, which reads:

R802.10.4 Alterations to trusses.

Truss members shall not be cut, notched, drilled, spliced or otherwise altered in any way without the approval of a registered design professional. Alterations resulting in the addition of load (e.g., HVAC equipment, water heater) that exceeds the design load for the truss shall not be permitted without verification that the truss is capable of supporting such additional loading.

In its testimony, the County asserted that the padding was added by Finer Homes to accommodate attic insulation and to raise the floor elevation, and that it did not require an engineer's drawing for the padding since it does not involve structural modification to the trusses. The County also testified that Finer Homes provided it with an engineered, stamped truss diagram by James Fletcher, a professional engineer, which specified the proper attachment of the padding to the bottom chords. As a result, the County accepted Mr. Fletcher's stamped truss diagram as an indication that the trusses met the requirements of the VCC, and therefore no code violations exist with respect to the trusses.

During their testimony, Thorpe argued that the addition of the 2"x6"

material on the bottom chords constitutes an alteration as referenced in R802.10.4 because the original truss design did not account for the additional weight of the added material, and because the trusses had been modified by Finer Homes, after their installation to accommodate a habitable attic. Thorpe also explained that the trusses have other damage unrelated to the padding which was never addressed by the County.

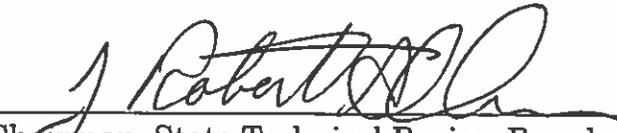
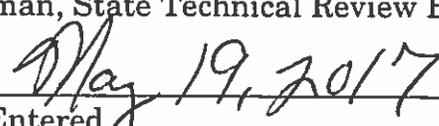
On this matter, the Review Board finds that although the parties disagree on whether the addition of the 2"x6" padding on the roof trusses constitutes an alteration, as it relates to VCC R802.10.4, the same section authorizes building officials to accept alterations when designed and evaluated by a registered design professional licensed in the Commonwealth of Virginia, which occurred in this case. Additionally, VCC Section 113.7 requires the building official to accept a report from an approved inspection agency unless there is cause to reject it.

The tertiary issue under appeal concerning compliance time for the correction of code violations as it relates to VCC Sections 113.6 and 115.2 was withdrawn by Thorpe during the hearing.

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 County building department,

and the local appeals board's upholding of that decision, to be, and hereby is, upheld.


Chairman, State Technical Review Board

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.