

Virginia:

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

IN RE: Appeal of Nihad AliAkbar
 Appeal No. 17-1

Hearing Date: May 19, 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 February of 2016, the Fairfax County Department of Code Compliance

(FCDCC), the agency responsible for the enforcement of Part I of the 2012 Virginia Uniform Statewide Building Code (the Virginia Construction Code, or VCC), in response to a complaint, conducted an inspection of property located at 3706 Franconia Road in Alexandria, owned by Nihad AliAkbar (AliAkbar).

Consequently, the FCDCC issued a Corrective Work Order (Order) to AliAkbar for multiple VCC violations for construction related to a detached accessory structure on the property.

In March of 2016, the FCDCC then issued a Notice of Violation (Notice) to AliAkbar for the outstanding code violations listed in the aforementioned Order, specifically VCC Sections 108.1 (*When permits are required*), 113.3 (*Minimum inspections*) and 113.8 (*Final Inspection*) related to the conversion of an accessory structure into a second dwelling, the installation of a sewer lateral between the house and the accessory structure, and the construction of an A-frame roof over the structure's flat roof.

In April of 2016, AliAkbar filed an appeal to the Fairfax County Board of Building Code Appeals Board (local appeals board) which heard the appeal in December of 2016 and upheld the decision of the FCDCC. AliAkbar further appealed the local appeals board's decision to the Review Board and Review Board staff designated the appeal to the Review Board as Appeal No. 17-1.

On May 19, 2017, a hearing before the Review Board was conducted with AliAkbar and representatives of the FCDCC, and their respective legal counsel, in attendance.

III. FINDINGS OF THE REVIEW BOARD

During the hearing, AliAkbar testified that most of the unpermitted construction work cited in the Order and subsequent Notice were present when he purchased the property in July of 2015, except for the sloped roof which he hired a contractor to build. AliAkbar, through his legal counsel, noted that the original accessory building was constructed as a garage under a legally obtained building permit and that it constituted a non-conforming use under local zoning ordinances. Furthermore, AliAkbar conceded the violations against him by the FCDCC; however, he contends that FCDCC's Notice should be overturned because it did not reference the appeals section (VCC Section 119) as required by VCC Section 115.2 (Notice of Violation).

Additionally, AliAkbar testified he was deprived of due process because the Notice did not reference VCC Section 119. In response, the FCDCC argued AliAkbar was not deprived of due process because the Notice sufficiently informed him about the appeals process and because he was not prevented from filing an appeal to the local appeals board, and then further to the Review Board.

Also, the FCDCC testified that no progress had been made by AliAkbar since the Order was issued. On that point, AliAkbar indicated he was waiting for the results of a scheduled zoning hearing on whether the existing remodeling work would be allowed before remediating any VCC violations. The FCDCC expressed concern that AliAkbar was asking for an infinite delay, and therefore urged the Review Board to not defer its decision.

Ultimately, the Review Board finds that the relevant code section in this appeal is VCC Section 115.2, which reads in pertinent part:

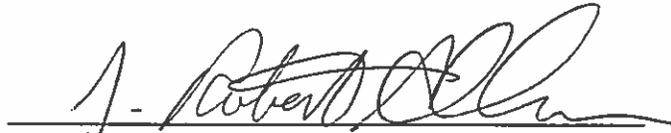
“[...] The notice shall be issued by either delivering a copy to the responsible party by mail to the last known address or delivering the notice in person or by leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place if the person in charge of the premises cannot be found. The notice of violation shall indicate the right of appeal by referencing the appeals section.”

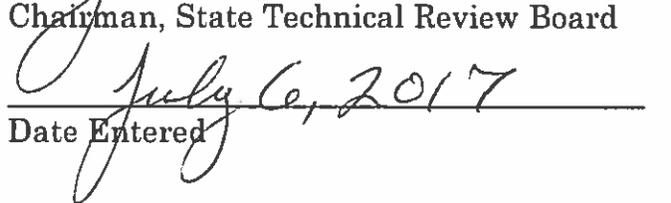
The Board finds that failure of the notice issued by FDCCC to explicitly reference VCC Section 119, a requirement purposely adopted by the Board of Housing and Community Development (BHCD) in VCC Section 115.2, is not merely a technical violation. Section 119 of the VCC contains many important provisions setting out specific obligations of counties and municipalities regarding the establishment and operation of local appeals boards. The requirements placed upon counties and municipalities by Section 119, correspondingly, create important rights for persons aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC. Failure by FDCCC, or the local building official of any jurisdiction to explicitly reference VCC 119, as required by the BHCD, is a failure to inform aggrieved persons of these rights.

On this issue, the Review Board finds that although the Notice contained information about filing appeals, it did not explicitly reference VCC Section 119, as required in VCC Section 115.2.

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 FCDCC, and the local appeals board to be, and hereby is, overturned.



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 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.

To Wit:

I, Vernon Hodge, am the records custodian for the State Building Code Technical Review Board. I affirm and authenticate that the above is a true and accurate copy of the final order issued by the Review Board.