

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Anthony T. Grant, Jr.
Appeal No. 17-3

DECISION OF THE REVIEW BOARD

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 (§ 2.2-4000 et seq. of the Code of Virginia).

Case History

Anthony T. Grant, Jr. (Grant), current co-owner of a single family dwelling located at 4281 Cole Avenue, in Suffolk, appeals determinations by the City of Suffolk's building official and inspections department for the enforcement of the Virginia Uniform Statewide Building Code, Part I, New Construction, also known as the Virginia Construction Code, or VCC. The building official and inspections department is referred to hereinafter as the "building official."

Grant's home was completed and the VCC certificate of occupancy issued in early to mid-2015 under the 2009 edition of the VCC, which incorporates the 2009 edition of the International Residential Code (IRC) for the technical requirements for home construction. By December of 2015, Grant was corresponding with the building official concerning problems with the construction of the home.

After numerous inspections and the issuance of some notices of violation under the VCC to the builder of the home, KEBCO Enterprises, Inc., and its representative Kenneth Bullock (collectively referred to hereinafter as “Bullock”), in November of 2016, Grant filed an appeal to the City of Suffolk Board of Building Code Appeals (City appeals board), alleging that the building official had inadequately addressed the problems with the home.

The City appeals board heard Grant’s appeal in January of 2017 and upheld all determinations of the building official, with the exception of modifying a decision relating to the proper sizing of the heating and air-conditioning system and determining that two issues raised by Grant were not governed by the VCC.

Grant further appealed to the Review Board in February of 2017. Review Board staff conducted an informal fact-finding conference in April of 2017, attended by Grant, the building official and Bullock, for the purpose of clarifying the issues on appeal to the Review Board. The parties were subsequently given opportunity to supplement the record and address a summary of the appeal produced by Review Board staff.

A hearing before the Review Board was held on June 15, 2017 and attended by Grant, the building official and Bullock.

Findings

Whether there is a violation of Section N1102.4 of the IRC.

A violation of this section was cited by the building official in a notice of violation dated December 22, 2015. Section N1102.4 requires either a test of air infiltration or a visual inspection during construction to assure that all joints and penetrations through the exterior envelope are sealed to prevent air infiltration. The building official asserts that the only issue involving this code provision was inadequate insulation in the attic and a question of adequate

attic venting, and that compliance was determined through an inspection performed on May 13, 2016, and confirmed through the testimony of the building official at the hearing before the City appeals board who testified that the attic insulation was “evened out at the location where it appeared uneven, and that the proper number of roof vents were verified.”

The Review Board finds to the contrary. Grant identified and provided evidence of excessive air infiltration along with moisture intrusion from lack of proper flashings and exterior covering installation. No test of air infiltration has been conducted and no evidence was provided that a visual inspection was performed during construction. In addition, evidence was provided of air infiltration causing lack of proper functioning of the heating and cooling system.

Whether there is a violation of Section R703.11 of the IRC
for the lack of siding.

A violation of this section was cited by the building official in a notice of violation dated December 22, 2015, citing missing siding under the cantilevered fireplace and siding pulled free in several areas. The building official testified before the City appeals board that these violations had been corrected. The Review Board agrees. Grant provided no pictorial evidence or testimony that the violations had not been corrected.

It is noted that this determination has no bearing on the general issue of proper installation of the siding, which is addressed by a new notice of violation issued by the building official in May of 2017 and which is not under appeal in this proceeding.

Whether there is a violation of Section R408 of the IRC
for the crawlspace and grade around the house.

Grant withdrew his appeal concerning debris in the crawlspace at the hearing before the Review Board, but is still challenging the building official’s decision that the exterior grade and crawlspace floor level are in compliance with the code.

The building official testified before the City appeals board that additional fill was added to the crawlspace to achieve compliance. The Review Board finds to the contrary. Bullock added sand to the crawlspace in May of 2016. Inspections in January of 2017 by Quality Home Inspections and in April of 2017 by Michael W. Schooley, P.E. indicated the moisture issues were still present. A third party inspection report in May of 2017, at the request of the building official, stated there were wet areas under the vapor barrier on top of the sand in the crawlspace.

Adding sand in the crawlspace does not effectively raise the grade in the crawlspace to comply with Section R408.6 since sand is a porous material and will not readily block the flow of water into the foundation and crawlspace area. In addition, there is evidence of presence of a high surface water table and inadequate grading on the exterior of the home. The continued presence mold and mildew on the framing elements is also indicative of noncompliance with Section R408.6.

Whether there is a violation of Section 109.3 of the VCC relative to the requirement for a structural evaluation.

The action to require a structural evaluation was not through a notice of violation issued by the building official, but rather through a summons issued to Bullock for a civil penalty in the City of Suffolk General District Court. Therefore, the matter was not properly before the City appeals board.

Whether there is a violation of Section R403.1.6 of the IRC for the framing connections at the rear foundation wall.

Grant's engineer identified an issue with the framing of the rear wall of the house where it cantilevered over brick veneer. Bullock had an architect inspect the home and no problems were noted. Consequently, the building official determined no violation of the code existed

relative to the rear wall construction. The City appeals board upheld the building official's determination.

Subsequent to the City appeal board's decision, Grant's engineer conducted an additional inspection and noted that the recommended correction for the rear wall framing and foundation had not been adequately implemented. Based on that report, the building official included a citation in a new notice of violation issued in May of 2017 for the rear wall framing and foundation reversing the prior determination. The new notice of violation is not under appeal in this proceeding.

Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:

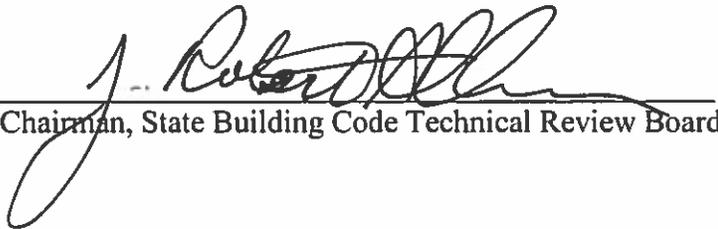
1. The decision of the building official, confirmed by the City appeals board, that no violation of Section N1102.4 of the IRC exists, is hereby overturned. The violations present are delineated in the "Findings" section of this decision.

2. The decision of the building official, confirmed by the City appeals board, that the violation of Section R703.11 of the IRC for the lack of siding was corrected, is hereby upheld.

3. The decision of the building official, confirmed by the City appeals board, that the violations of Section R408 of the IRC for the crawlspace and grade around the house were corrected, is hereby overturned.

4. The appeal of whether there is a violation of Section 109.3 of the VCC relative to the requirement for a structural evaluation is hereby dismissed as not properly before the Review Board and the decision of the City appeals board on this issue is hereby vacated.

5. The appeal of whether there is a violation of Section R403.1.6 for the framing connections to the rear foundation wall is hereby dismissed as moot due to the issuance of a new notice of violation addressing the issue.



Chairman, State Building Code Technical Review Board

Date entered: Sept. 15, 2017

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 Hodge, Acting 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.