

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Timothy Dolan
Appeal No. 20-01

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

II. Case History

On April 10, 2020, Timothy Dolan, of Riverstone Development LLC (Dolan), filed an appeal to the Essex County Local Board of Building Code Appeals (local appeals board), for lack of action by the County Building Official (County), related to his application for permit for his 15.3 acre property located on Hobbs Hole Drive, in the town of Tappahannock. Dolan proposed to construct approximately 153 units, in multiples of 16-unit two story buildings, using the exception in VCC Section 903.2.8.

On May 12, 2020, Dolan appealed to the Review Board. After review of Dolan's application for appeal, Review Board staff contacted Essex County to discuss the appeal; subsequently, a local appeals board hearing was scheduled for June 3, 2020. Due to insufficient notice, the hearing was rescheduled for June 17, 2020 where the appeal was dismissed because there was no decision made to appeal. Dolan further appealed to the Review Board, after receiving the decision of the local appeals board, on July 13, 2020.

A virtual Review Board hearing was held September 18, 2020. Appearing at the Review Board hearing for Essex County were Alwyn Davis, Wayne Verlander, Craig Thompson, and Chris Mackenzie, legal counsel. Timothy Dolan, Brenda Dolan, Jeff Howeth, Steven Selinger, Joe Blackburn, Jimmy Synder, and Bill Bayliss, legal counsel, attended the hearing on behalf of Timothy Dolan.

III. Findings of the Review Board

A. Whether to uphold the decision of the local appeals board, that there was no decision made to appeal, based on the lack of a decision by the County Building Official on the applicability of VCC Section 903.2.8 (Group R).

Timothy Dolan, through legal counsel, argued that on several occasions he asked the county to determine whether sufficient water flow and volume existed for the proposed project and if not, whether VCC Section 903.2.8 applied to the proposed project. Dolan further argued that the county refused to answer those questions; thus, the county refused to make a decision. Dolan, through a witness, also argued that the Town of Tappahannock municipal water system could not provide sufficient water flow or volume for the proposed project.

The County, through legal counsel, argued that there was no decision by the building official to appeal. The County further argued that the assertion of inactivity by the County was disproven by the sheer volume of the record presented to the Board, particularly the timeline provided by the County in its supplemental submission, which clearly showed that there had not been inactivity by either party; rather, that both parties had been very active since the beginning of December 2019. The County, through a witness, also argued that the Town of Tappahannock municipal water system can provide sufficient water flow and volume for the proposed project.

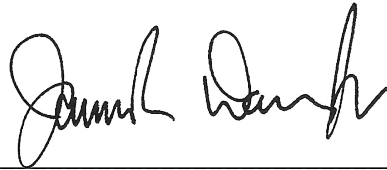
The Review Board agrees with the local appeals board that at the time of the application for appeal was submitted a decision by the building official had not occurred; therefore, there was nothing to appeal.

IV. Final Order

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

- A. Whether to uphold the decision of the local appeals board, that there was no decision made to appeal, based on the lack of a decision by the County Building Official on the applicability of VCC Section 903.2.8 (Group R).

The decision by the local appeals board that no decision had been made by the building official to appeal is upheld.



Chair, State Building Code Technical Review Board

Date entered _____November 20, 2020_____

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 W. Travis Luter, Sr., 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.