

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Fairfax County
Appeal No. 21-01

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 September 29, 2020, Freedom Plumbers Corporation (Freedom) filed a code modification request to the Fairfax County Department of Code Compliance (County), the agency responsible for the enforcement of Part 1 of the 2015 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), for the home, located at 6231 Nelway Drive, McLean, Virginia in Fairfax County. The modification request was for VCC Sections P3002.1 (Piping within a building), P3002.2 (Building sewer), and P3002.3 (Fittings) which require drain, waste, vent, and sewer piping and fittings to comply with the materials and reference standards listed in VCC Tables P3002.1(1), P3002.1(2), and P3002.3 for the installation of Cured in place pipe (CIPP) in 95' of sewer piping. In October of 2020, the County approved the modification request contingent on eleven (11) conditions. A short time later in October of 2020, Freedom submitted the pre-lining video pursuant to the County contingency listed in the modification approval letter. The pre-lining video was failed by the County due to the pipe holding water.

Freedom filed a timely appeal to the Fairfax County Board of Building Code Appeals (local appeals board). The local appeals board approved the appeal for the installation of the CIPP on in December of 2020.

On January 4, 2021, the County further appealed to the Review Board. A virtual Review Board hearing was held March 19, 2021. Appearing for Fairfax County were Richard Grace, James Canter, Manuel Felipe, and Paul Emerick, legal counsel. Ricky Salinas attended on behalf of Freedom. The property owner, Leonard Leo, was properly notified but did not attend the hearing.

Findings of the Review Board

Whether to uphold the decision of the local appeals board and overturn the County that the conditions of the modification granted by the County, under the 2015 VCC, were met regarding pipe slope.

The County, through legal counsel, argued that the decision of the local appeals board was not influenced by any application of the USBC; rather by sympathy for the property owner who would likely have to endure a costly excavation and replacement of the sewer lateral to correct an insufficient slope in the pipe. The County further argued that after review of the required pre-installation video, the County failed the inspection noting that the pipe had insufficient slope and was holding water. Lastly, the County argued that the CIPP installation was a non-compliant installation based on the USBC requirements.

Freedom argued that it disagreed with the County's insinuation that the local appeals board made its decision solely on sympathy for the property owner having to endure a costly repair of the sewer pipe through conventional means, rather than a correction to the sewer pipe that is back graded and appropriate enforcement of the USBC. Freedom also argued that the sewer pipe had been working properly for the past 11 months since the CIPP installation. Freedom argued that

the standards laid out by the County in the modification approval letter were not consistent with the variety of uses of CIPP and that the approval standards of the County were limiting and prohibitive for great candidate host pipes for the installation of CIPP. Freedom also argued that the County preapproval requirements for lining require the host pipes to be in “perfect, like new” condition for approval. Freedom further stated that the County treats the installation of CIPP as a replacement procedure rather than a rehabilitation product for deteriorating pipe. Lastly, Freedom argued that in absence of back grade or a belly in the pipe, CIPP installation should be allowed.

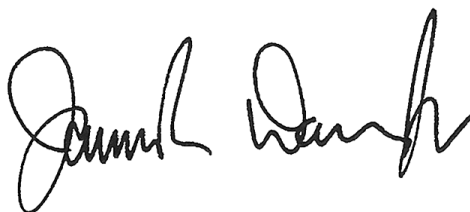
The Review Board finds that the matter needs to be remanded back to the County to re-evaluate the matter under the 2015 Virginia Existing Building Code (VEBC) and to work with Freedom to develop the proper submission

III. Final Order

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

Whether to uphold the decision of the local appeals board and overturn the County that the conditions of the modification granted by the County, under the 2015 VCC, were met regarding pipe slope.

The decision of the County and local appeals board is remanded back to the County for reevaluation under the 2015 VEBC and to work with Freedom to develop the proper submission.



Chair, State Building Code Technical Review Board

Date entered _____May 21, 2021_____

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.