

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Black Wolf Services LLC
Appeal No. 22-05

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 8, 2021, the Prince William County Department of Development Services, Building Development Division (County), the agency responsible for the enforcement of Part 1 of the 1987 Virginia Uniform Statewide Building Code (VUSBC), performed an inspection of the structure located at 1316 Profit Court, in Prince William County, owned by Brightleaf Industrial Holdings LLC (Brightleaf) and occupied by Black Wolf Automotive Specialties (Black Wolf) following a complaint of possible work performed without permits and lack of sprinkler coverage.

The inspection resulted in the issuance of a Notice of Violation (NOV) dated September 8, 2021 which cited the following two code violations:

- a. *“Occupying Structure w/o Certificate of Occupancy – Obtain an issued certificate of occupancy for the current tenant (Black Wolf Automotive Specialties).” Pursuant to “VUSBC Section 116.1”.*
- b. *“Construction Without Permits – Obtain all appropriate permits to resolve the sprinkler coverage issues.” Pursuant to “VUSBC Section 108.1.1”.*

Note: Item b. was resolved on October 1, 2021 by the removal of an illegally constructed wall.

On September 30, 2021, Black Wolf completed the Prince William County Joint Occupancy Evaluation (JOE) permit application (Commercial) which was reviewed on October 12, 2021 and rejected. In the final determination letter, the County determined the storage space over the office was a mezzanine and cited the following minimum life safety requirements they needed to comply with in order for the JOE to be approved:

- a. *Means of Egress for Mezzanines (Stairway) per VUSBC/BOCA 605.3*
- b. *Open-sided floor areas more than 30 inches above the floor or grade below (guardrails) per VUSBC/BOCA 803.6*
- c. *Guardrail systems are required on the open sides of elevated walking surfaces to minimize a fall from the walking surface to the lower level below per VUSBC/BOCA 824.1*

Black Wolf filed a timely appeal to the Prince William County Building Code Board of Appeals (local appeals board) which was denied. Black Wolf further appealed to the Review Board on May 2, 2022.

Appearing at the Review Board meeting for Black Wolf were Chris Berry and Pete Cartright. Appearing at the Review Board meeting for the County were Eric Mays, Chad Roop, and Thomas Jarman.

III. Findings of the Review Board

A. Whether to uphold the decision of the County and the local appeals board that a violation of 1987 VUSBC/BOCA Section 605.3 Egress exists.

B. Whether to uphold the decision of the County and the local appeals board that a violation of 1987 VUSBC/BOCA Section 803.6 Open-sided floor areas exists.

C. Whether to uphold the decision of the County and the local appeals board that a violation of 1987 VUSBC/BOCA Section 824.1 General exists.

Black Wolf argued that the storage area was originally approved by the County without stairs pursuant to the approved plans provided by the County. Black Wolf further argued that the storage area was only accessed by the two business owners; the employees were not allowed to access the area. Black Wolf also argued that the County initially cited violations to the incorrect building/unit and the incorrect edition of the code.

The County argued that Black Wolf lacked the clear understanding of the following:

- a. Differences between the roles, duties, and responsibilities of the fire code official/inspector and the building code official/inspector
- b. Differences between the fire code requirements enforced during a routine fire code inspection and the building code requirements enforced during the construction of a building
- c. Effects of changing the use of a building or space to that which does not comply with the applicable building code enforced during construction
- d. Differences between building construction and fire suppression plan submission and approval

The County further argued that the approved plans referenced by Black Wolf were not the approved building construction plans, rather were the County fire protection plans from the County fire marshal's office. The County further argued that the sprinkler contractor erroneously labeled the area above the office as a mezzanine on those plans. The County also argued that the area above the office was neither constructed nor approved as a mezzanine and concurred that stairs never existed to the area. The County further argued that Black Wolf had changed the use of the area over the office by using it for storage, resulting in the area becoming a mezzanine rather than non-usable space. The County concurred Black Wolf's assertions that the incorrect building/unit and edition of the code were initially cited. The County argued that the 1990 and 1987 editions of the VUSBC/BOCA read the same and have the same code requirements for a building constructed under each code; therefore, the County's determination is unchanged regardless of this error. The County argued that the cited violation did, in fact, exist in Black Wolf's building/unit regardless of the initial error in identifying the building/unit.

Lastly the County argued that the incorrect building/unit and edition of the code initial citations were irrelevant to the final decision of the board for the case.

The Review Board found many of the arguments offered by Black Wolf were irrelevant as they were unrelated to the cited violations and/or building code. The Review Board agrees with the County and local appeals board and finds that the area over the office is a mezzanine and the cited violations of 1987 VUSBC/BOCA Sections 605.3 (Egress), 803.6 (Open-sided floor areas), and 824.1 (General) exist because it is an occupiable space acting as a mezzanine; therefore, is required to have guards and a means of egress.

IV. Final Order

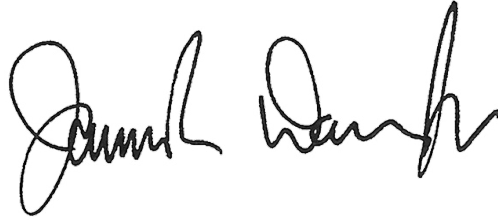
The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:

A. Whether to uphold the decision of the County and the local appeals board that a violation of 1987 VUSBC/BOCA Section 605.3 Egress exists.

B. Whether to uphold the decision of the County and the local appeals board that a violation of 1987 VUSBC/BOCA Section 803.6 Open-sided floor areas exists.

C. Whether to uphold the decision of the County and the local appeals board that a violation of 1987 VUSBC/BOCA Section 824.1 General exists.

The decision of the County and local appeals board that the area over the office is a mezzanine and violations of the 1987 VUSBC/BOCA Sections 602.3, 803.6, and 824.1 exist is upheld because it is an occupiable space acting as a mezzanine; therefore, is required to have guards and a means of egress.



Chair, State Building Code Technical Review Board

Date entered _____ May 12, 2023 _____

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.