

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD
(For Preliminary Hearing as to Timeliness)

IN RE: Appeal of Jonathan and Lauren Borchers
Appeal No. 22-08

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 March 25, 2022, Chesterfield County Department of Building Inspections (County), the agency responsible for the enforcement of Part 1 of the 2015 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), informed Jonathan and Lauren Borchers (Borchers), via email, there were no violations to cite at the structure, located at 9930 Fawnhope Court, in Chesterfield County.

Borchers filed an appeal to the Chesterfield County Local Board of Building Code Appeals (local appeals board) which was denied on May 19, 2022. Borchers appealed to the Review Board on June 17, 2022. A Review Board hearing was held November 18, 2022. Appearing at the Review Board hearing for the Borchers were Jonathan and Lauren Borchers. Appearing at the hearing for Chesterfield County were Jason Laws, Ron Clements, and Emily Russel; legal counsel.

III. Findings of the Review Board

A. Whether to uphold the decision of the County Building Official and the local appeals board that the appeal is untimely.

Borchers argued that their appeal was timely because the March 25, 2022 email from the Assistant Director of Chesterfield County Department of Building Inspections, was an application of the code. Borchers further argued that their appeal was proper as they notified the County promptly, within 30 days, upon discovering the issues.

The County, through legal counsel, argued that the final inspection approval on July 22, 2021 was the application of the code; therefore, the Borchers appeal was untimely as it was filed beyond the 30 day timeframe allowed to file an appeal to the final inspection. The County also argued that the March 25, 2022 email from the Assistant Director of Chesterfield County Department of Building Inspections, was not an application of the code.

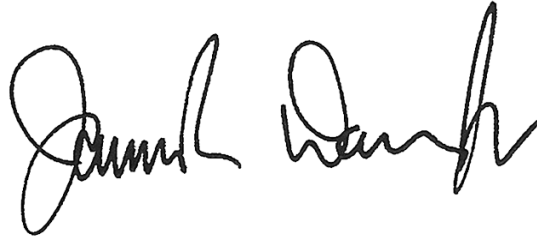
The Review Board finds that the March 25, 2022 email from the Assistant Director of Chesterfield County Department of Building Inspections, was an application of the code. Therefore, the Review Board remands the case back to the local appeals board to hear the merits.

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 Building Official and the local appeals board that the appeal is untimely.

The decision of the County and local appeals board that the appeal was untimely is overturned; furthermore, the appeal is remanded back to the local appeals board to hear the merits of the case because the March 25, 2022 email from the Assistant Director of Chesterfield County Department of Building Inspections, was an application of the code.



Chair, State Building Code Technical Review Board

Date entered _____February 17, 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.