

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Jonathan and Carolyn Clark
Appeal No. 14-13

Hearing Date: June 19, 2015

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. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Mr. and Mrs. Clark appeal the validity of citations under Part III of the Virginia Uniform Statewide Building Code (also known as the Virginia Maintenance Code, or VMC) concerning their home at 7227 Auburn Street, in the Annandale area of Fairfax County.

In April of 2014, acting on a complaint, County inspectors entered the Clarks' property by walking up the driveway past the side of the house to an area in front of the garage. Shortly thereafter, Mr. Clark came out of the house and talked to the inspectors.

The inspection resulted in the issuance of a notice of violation under the VMC.

The Clarks, through counsel, appealed to the Fairfax County Board of Building Code Appeals (local board), which conducted a hearing in October of 2014 and ruled to uphold the citations.

The Clarks then, again through counsel, further appealed to the Review Board.

Review Board staff conducted an informal fact-finding conference in March of 2015, attended by Mr. Clark, his legal counsel, County inspectors and the County's legal counsel.

The Clarks, through counsel, advanced three arguments concerning the validity of the citations; first, that the inspectors did not ask for permission to do the inspection; second, that the citations were overly broad; and third, that the 30 day period for correction of the violations on the notice was not a reasonable time limit.

Review Board staff set a briefing schedule with the parties' legal counsel for submitting written arguments concerning the lack of permission to conduct the inspection. In addition, Review

Board asked the County inspectors for clarification on each citation listed.

Subsequent to the conference, a staff summary was drafted and distributed to the parties and opportunity given to submit objections, corrections or additions to the staff summary. All documents, written arguments and other correspondence was then compiled as part of an agenda package for a meeting of the Review Board and a hearing was conducted concerning the appeal. Mr. Clark, his legal counsel, the County inspectors and their legal counsel were present at the hearing.

III. FINDINGS OF THE REVIEW BOARD

The Clarks first argue that the enforcement action by the County under the VMC is invalid due to the illegal entry of the inspectors on the property in violation of the Fourth Amendment of the U.S. Constitution.

The County argues that accessing the property on the driveway to the area where cars are normally parked in front of the garage is not a violation of either the Virginia Constitution or the U.S. Constitution and the violations were plainly visible from the public right-of-way.

The Review Board finds that § 104.1 of the VMC, which contains verbatim language from § 36-105(C)(3) of the Code of Virginia, addresses the circumstances where a search warrant is

necessary for inspections under the VMC and limits it to only where entry is refused. In the case at hand, Mr. Clark met the inspectors in the driveway, acquiesced to their presence and conducted a conversation with them about the lack of maintenance of the property. Further, the Review Board finds that the inspectors were in an area of the property where visitors would normally be expected to go. In addition, the Review Board finds that even if any potential right of entry issues were present, it is harmless error since the violation cited by the County were visible from the public right-of-way.

Concerning the cited violations themselves, the Clarks argue that the citations should be invalidated since they were overly broad and did not clearly identify the aspects of the house and garage held in violation of the VMC. The Review Board disagrees and finds that the County's notice of violation cited the appropriate VMC sections violated and indicated on the notice what work needed to be done to remedy the violations. In addition, at the informal fact-finding conference conducted by Review Board staff prior to the hearing before the Review Board, each cited violation was discussed and any confusion on the part of the Clarks concerning the nature of each violation was eliminated. Further, the Clarks did not provide any substantive arguments at the hearing before the Review Board that the violations did not exist. Therefore, the Review Board finds that the violations as

cited by the County, and as further identified through the Review Board staff summary of the informal fact-finding conference, do in fact exist.

Finally, the Clarks ask if violations are determined to be valid, that additional time be allowed for their correction. The Review Board finds that the 30-day timeframe for repairs stipulated by the County is reasonable. In addition, the County acknowledged at the hearing before the Review Board that the timeframe is flexible as long as the Clarks were making progress on repairs. Therefore, the Review Board orders the 30-day timeframe for completion of repairs to begin upon the entry of this final order.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the notice of violation issued by the Fairfax County Department of Code Compliance to the Clarks, and the ratification of that decision by the local board, to be, and hereby is, upheld with the nature of the violations as clarified in the Review Board staff summary of the informal fact-finding conference.

s/s

Chairman, State Technical Review Board

August 21, 2015

Date Entered

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 W. Hodge, 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.