

Virginia:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeals of the City of Richmond
Appeal Nos. 15-12 and 15-13

Hearing Date: February 19, 2016

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 & 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

1. In response to complaints, the City of Richmond Department of Planning and Development Review (DPDR), the agency

responsible for the enforcement of Part III of the 2006 Virginia Uniform Statewide Building Code, the Virginia Maintenance Code (VMC), issued Notices of Violation in March of 2015 to Mobile Towne Partnership (Partnership) for two manufactured homes (Unit TR80 and Unit 102) located on property in its park at 5005 Old Midlothian Turnpike.

2. The Notices cited a violation of VMC Section 105.1 (*Unsafe Structures or Structures Unfit for Human Occupancy*) alleging that the homes were unfit for human occupancy due to a lack of operational heating facilities.

3. The Notices of Violation issued by the DPDR were mailed to the Partnership in late March or early April of 2015 requiring abatement of the respective violations within thirty calendar days.

4. Subsequently, Phil Storey (Storey), legal counsel for the individual owners of the manufactured homes, Heberto Najera (Najera) and Ingrid Giron de Munoz (Munoz), Unit TR80 and TR102 respectively, filed appeals of the notices to the City of Richmond's Local Board of Building Code Appeals (City appeals board) in April of 2015, on owners' behalf.

5. The City appeals board conducted a hearing on the appeals and ruled to reverse DPDR's Notices of Violation on the

unfit provisions of VMC Section 105.1 relating to the lack of operational heating facilities in the homes.

6. Consequently, the DPDR further appealed to the Review Board.

7. Review Board staff conducted an informal fact-finding conference in October of 2015; attended by DPDR representatives, and the owners' legal counsel. It was clarified during the meeting that the property in the park is owned by the Partnership, but that one manufactured home is owned by Munoz, the other by Najera. During the conference, the parties agreed that the only issue under appeal is the local board's decision concerning the unfit provisions of Section 105.1 (*Unsafe Structures or Structures Unfit for Human Occupancy*) and whether the lack of functioning heating facilities in the homes constitutes a violation of the same section.

8. Review Board staff combined both DPDR appeals and a hearing before the Review Board was conducted with representatives from the City of Richmond and Storey, legal counsel for both homeowners, in attendance.

III. FINDINGS OF THE REVIEW BOARD

In general, the issue in this appeal is whether the lack of heating facilities constitutes a violation of Section 105.1 of the 2006 VMC (Unsafe Structures or Structures Unfit for Human Habitation) by rendering a "structure unfit for human habitation" as defined in Chapter 2 of the 2006 VMC as follows:

"An existing structure determined by the code official to be dangerous to the health, safety, and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential equipment, or (ii) the required plumbing and sanitary facilities are inoperable."

The Review Board, in its consideration of the issue, however, finds that DPDR did not provide enough evidence in its testimony, nor in its submitted documentation, to sufficiently demonstrate that the specific, individual homes owned by Munoz and Najera lacked heating facilities (i.e. the homeowners had not maintained their homes' heating facilities) when the inspections were performed in March of 2015. Moreover, DPDR staff could not assure the board that the homes in question presently lacked operational heating facilities. Absent such evidence, the Review Board cannot make a determination as to whether either home was, or still is, in violation of Section 105.1 of the 2009 VMC. Consequently, the Review Board finds it

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 Alan W. McMahan, 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.