

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Leslie Carper
Appeal No. 15-7

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

Ms. Carper seeks to have the Review Board hear an appeal which was withdrawn by the appealing party.

In February of 2014, the Fairfax County Department of Code Compliance issued a notice of violation to Ms. Carper, the registered agent of Mycondo2rent, LLC, and the person in control

of Unit D of The Clusters at Woodlawn, a condominium at Beekman Place in Fairfax County. The notice cited violations of Part III of the Virginia Uniform Statewide Building Code, known as the Virginia Maintenance Code, or VMC.

Ms. Carper appealed the issuance of the notice to the Fairfax County Board of Building Code Appeals (local board), which heard her appeal in May of 2014 and ruled to uphold the County's citation for the lack of maintenance of a glass sliding door, and overturned the citations for lack of maintenance of the floor area adjacent to the sliding glass door, ruling that the violations were the responsibility of the condominium association and not Ms. Carper.

The Department of Code Compliance appealed the local board's ruling to the Review Board in June of 2014. The appeal to the Review Board was designated as Appeal No. 14-5. In November of 2014, the Department of Code Compliance corresponded with Review Board staff to withdraw the appeal as repairs had been made by the condominium association and the violations had been corrected. Review Board staff notified all parties of the withdrawal of the appeal.

In May of 2015, Ms. Carper, prompted by receiving a bill for the repairs to the condominium unit from the condominium association, requested Review Board staff to schedule an appeal hearing for Appeal No. 14-5, stating that she had the right to

further the County's appeal since correspondence from the Review Board staff concerning continuances stated that either party could contact the Review Board staff should they wish to move forward on an appeal.

Review Board staff informed Ms. Carper that the County's appeal had been withdrawn, so there was no appeal which could be moved forward. Ms. Carper then filed an appeal application with the Review Board and again requested that an appeal hearing be scheduled concerning the County's February 2014 notice of violation. Ms. Carper's appeal was designated as Appeal No. 15-7 and she was advised that since no new application of the VMC had been made by the County and the County's appeal had been withdrawn, the issue of whether her appeal was proper would need to be considered by the Review Board. A hearing was then scheduled for the June 2015 meeting of the Review Board for that purpose.

III. FINDINGS OF THE REVIEW BOARD

Ms. Carper did not attend the hearing before the Review Board due to transportation issues and relied on her filings as arguments concerning her right of appeal. The condominium association filed written arguments, but also did not attend the hearing. Legal counsel for the County was present and argued that Ms. Carper did not have a right of appeal as the prior appeal was

no longer active and there was no new decision by the County for her to appeal.

The Review Board agrees. The informational material distributed by Review Board staff to the parties in all appeals is only specific to continuances, not to the withdrawal of appeals. Therefore, Ms. Carper misconstrued the statement in that material indicating that either party had the right to move an appeal forward. Furthermore, Review Board staff does not have the authority to decide when an appeal is proper. Those determinations are solely within the jurisdiction of the Review Board.

For an appeal to be proper with respect to the VMC, under § 106.5, an appeal of an application of the code must be made to the local board within 14 calendar days of the receipt of the decision being appealed. Then, under § 106.8, an appeal must be filed with the Review Board within 21 calendar days of the receipt of the decision of the local board.

There is no local board decision within 21 days prior to the date of Ms. Carper's filing her application for appeal to the Review Board; therefore, the appeal is invalid.

Ms. Carper also does not have the right to a hearing before the Review Board on the appeal that the County filed (Appeal No. 14-5), as the County withdrew its appeal. That a withdrawn appeal is an ended cause with no further action being able to be taken is

a well established principle. The Review Board and its staff have had many appeals withdrawn prior to hearing and routinely correspond with the parties in such cases stating that no further action will be taken.

Further, Ms. Carper did have the right to appeal the local board's June 2014 decision to the Review Board independent of the County's appeal, but chose not to exercise that right. Therefore, Ms. Carper gave up any independent right of appeal and could participate in the County's appeal only to the extent that it moved forward and was not withdrawn.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders Ms. Carper's appeal to be, and hereby is, dismissed as invalid.

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.