

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of J. Matthew Hogendobler, DMD
Appeal No. 17-13

DECISION OF THE REVIEW BOARD

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).

Case History

J. Matthew Hogendobler, DMD (Hogendobler), owner of the home located at 2209 N. Lakeside Drive in the City of Virginia Beach, appeals determinations of the City of Virginia Beach Code Enforcement Division, in enforcing Part III of the Uniform Statewide Building Code (Virginia Maintenance Code or VMC), concerning an existing swimming pool on the property.

City of Virginia Beach Code Enforcement Division issued an inspection report and VMC Notice of Violation for the structure in June of 2017 requiring the structure to be maintained in a clean and sanitary condition, and in good repair, and indicated the pool liner was ripped and in disrepair, and the pool pump and filter were not operational.

In August of 2017, Hogendobler filed an appeal by letter to the City of Virginia Beach City Manager (City Appeals Board). The City Appeals Board heard Hogendobler's appeal in October of 2017 and ruled to dismiss his appeal as being untimely. The City Appeals Board also heard the case on its merits and found the notice of violation to be appropriately issued.

Hogendobler filed an application for appeal to the Review Board in November of 2017. Review Board staff contacted the parties and asked for the submittal of any relevant documents. Subsequently, Review Board staff scheduled an informal fact-finding conference to meet with the parties and go over the issues in the appeal.

Appearing at the Review Board (Review Board) hearing for the appellee, the City of Virginia Beach (Virginia Beach), was Tobias Eisenlohr, legal counsel for the City, as well as Cheri Hainer, Wells Freed, and Justin Doyle. Appearing at the Review Board hearing for the appellant was Hogendobler.

Findings of the Review Board

I. Whether to dismiss the appeal as untimely

The action under review is dated June 26, 2017 and states that it is a notice of violation. Virginia Beach argues the Notice of Violation was sent via mail, per department policy, and that the mailed notice was not returned to Virginia Beach. Hogendobler argues he did not receive the June 26, 2017 notice until December 1, 2017. The Review Board members find that the receipt of the notice of violation is in dispute and the appeal to be timely.

II. Whether the structure is regulated by the VMC and whether to overturn the issuance of the June 26, 2017 VMC Notice of Violation.

Virginia Beach argues that the structure in Hogendobler's backyard was a swimming pool in deployable condition in need of maintenance. Hogendobler argues the structure is no longer a swimming pool, rather has been converted to a pond. The Review Board members find that the structure is a swimming pool regulated by the VMC; therefore, the cited violations listed on the Notice of Violation are applicable.

Final Order

I. Whether to dismiss the appeal as untimely

The appeal having been given due regard, and for the reasons set out herein, the Review Board members orders the decision of the County appeals board that the appeal was not timely filed to be, and hereby is, overturned.


II. Whether the structure is regulated by the VMC and whether to overturn the issuance of the June 26, 2017 VMC Notice of Violation.

The appeal having been given due regard, and for the reasons set out herein, the Review Board members orders the decision of the County appeals board that the notice of violation issued by the City of Virginia Beach Building Official relative to the property at 2209 N. Lakeside Drive was appropriately issued to be, and hereby is, upheld.



Vice-Chairman, State Building Code Technical Review Board

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 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.