

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Joshua and Makiba Gaines
Appeal No. 18-05

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

Joshua and Makiba Gaines (Gaines), a married couple who own rental property in the City of Norfolk (City), appealed the action by the City taken against them under Part III of the Virginia Uniform Statewide Building Code, the Virginia Maintenance Code, or VMC.

In February of 2017, the City issued a notice of violation under the VMC, listing a number of violations concerning the Gaines' rental house located at 2410 West Avenue. Later in February, the City issued an additional notice of violation identifying the property as unsafe or unfit for human habitation for the lack of a functioning heating system subsequently placarding the property. The tenant was relocated sometime between the issuance of the first and second NOV's.

In March of 2017, Gaines obtained a permit from the City to install a gas space heater. An inspection was conducted by the City on March 20, 2017; the installation was disapproved due to the use of an unvented heater for the sole source of heat. Gaines received a copy of the placard on

March 20, 2017. The Gaines filed an appeal to the City of Norfolk Local Board of Building Code Appeals (local appeals board). The local appeals board heard the Gaines' appeal on June 28, 2017 and ruled to dismiss the appeal as untimely.

Gaines then furthered appealed to the Review Board. In January of 2018, the Review Board, at a preliminary hearing, found the appeal of the February 15, 2017 notice to be timely and remanded the appeal back to the local appeals board for a hearing on the merits of the appeal.

The local appeals board conducted a hearing on the merits of the appeal on May 14, 2018 and denied the Gaines' appeal. Gaines filed a new application for appeal to the Review Board after receipt of the local appeals board decision.

Findings of the Review Board

A. Whether the City lawfully or unlawfully placarded the property under cited violations of VMC Sections 603.1 (Mechanical appliances), 605.1 (Installation), and 202 (Definitions)

Gaines argued the City unlawfully placarded the property because the property did not fit the definition of unsafe or unfit due to it being vacant at the time the placard was posted. Gaines further argued not having a heating system in place was not a threat to the public. Lastly, Gaines argued they were unable to get the cited violations corrected due to the language on the placard. Gaines further stated that contractors were not willing to enter the property as long as the placard remained in place.

The City argued that the property did fit the description of unfit or unsafe according to the definitions in section 202 of the VMC. The city further argued that according to section 105.6 of the VMC, the City is obligated to placard a property once it is found to be unsafe or unfit for habitation. The City further argued that the lack of a heating system in the property was a threat to the public. Lastly, the City argued that the placard does allow authorized persons to enter the

property; therefore, had a contractor pulled a permit to make the needed repairs or replacement of the heating system or had a contractor contacted the City with a request to enter the property they would have been considered authorized to enter the property and permission would have been granted by the City to enter the property. The Review Board agrees with the City's placarding of the structure; however, the Review Board did not agree with the language on the placard.

B. Whether or not to overturn the decision of the Property Maintenance Official and the local appeals board that violations of the VMC Sections 603.1 (Mechanical appliances), 605.1 (Installation) exist and further that the installation of a heating system is required.

Gaines argued the violations no longer existed due to the removal of the existing heating system. Gaines also argued the VMC did not require the existence of a heating system in the property. The City argued that the violations cannot be satisfied by the removal of the existing heating system and that a heating system is required to be in place according to the VMC. The Review Board agrees with the City that both violations exist and the installation of the heating system is required.

C. Whether or not the City should re-inspect the property related to the cited violations of the VMC Sections 603.1 (Mechanical appliances), 605.1 (Installation)

Gaines argued that the City refused to re-inspect the property even though they made multiple requests for the City to do so. The City argued that they made several attempts to re-inspect the property and each time the cited violations still existed. The Review Board felt the re-inspection was a non-issue since the NOV was upheld.

Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:

A. The decision of the City and the local appeals board to placard the structure to be, and hereby is, upheld. In addition the Review Board orders the placard to be, and hereby is, remanded to the City to be re-issued in full conformance with Section 105 of the VMC with a strong suggestion to add the following language to the placard: *"After a structure is placarded, entering the structure shall be prohibited except as authorized by the code official to make inspections, to perform required repairs or to demolish the structure."*

B. The decision of the City, confirmed by the City appeals board, that violations of Section R603.1 and 605.1 of the VMC exists and that the installation of a heating system is required, to be, and hereby is, upheld..

C. The decision of the City, confirmed by the City appeals board not to re-inspect the property to be, and hereby is dismissed as moot.


Vice-Chairman, State Building Code Technical Review Board

Date entered: 10/2/18

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.