



BOARD OF BUILDING CODE APPEALS ANNUAL MEETING AGENDA

Town Council Chambers
765 Lynn Street, Herndon, VA 20170

Thursday, February 27, 2025 | 5:30 PM

- 1. Call to Order**
- 2. Organizational Meeting Item**
 - a. Election of Chair
- 3. Approval of Minutes**
 - a. February 29, 2024 Board of Building Code Appeals Meeting Minutes
- 4. Comments**
 - a. Comments from Board Members
 - b. Comments from Staff Members
 - c. Comments from the Public
- 5. Presentation**
 - a. Local Board of Building Code Appeals Training
- 6. Adjournment**



**Building Board of Appeals
Board of Building Code Appeals
Annual Meeting
Agenda Item 2.a.**

Agenda Item: Election of Chair
Meeting Date: February 27, 2025
Category: Organizational Meeting Item
Prepared by: Kelli Malone, Permit Technician

Description:
In accordance with USBC Section 119.3, the Local Board of Building Code Appeals (LBBCA) shall annually select one of its members to serve as Chair. The Board will nominate and select from its members a Chair for a one-year term.

Background:
N/A

Fiscal Impact:
N/A

Staff Recommendation/Next Steps:
Staff recommends the Board nominate and select from its members a Chair for a one-year term.

Attachments:
None



**Building Board of Appeals
Board of Building Code Appeals
Annual Meeting
Agenda Item 3.a.**

Agenda Item: February 29, 2024 Board of Building Code Appeals Meeting Minutes

Meeting Date: February 27, 2025

Category: Approval of Minutes

Prepared by: Kelli Malone, Permit Technician

Description:

This is a request to approve the February 29, 2024 Board of Building Code Appeals Meeting Minutes.

Background:

N/A

Fiscal Impact:

N/A

Staff Recommendation/Next Steps:

Recommend approval as presented.

Attachments:

1. February 29, 2024, Board of Building Code Appeals Draft Meeting Minutes

**HERNDON BUILDING BOARD OF APPEALS
Meeting Minutes
Thursday, February 29, 2024**

1. Call to Order

Chairperson Lange called the Thursday, February 29, 2024, Herndon Building Board of Appeals (BBA) meeting to order at 5:35 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Chairperson Will Lange and Board Members Dennis Clark and Michael Wijdoogen. Board Members Paul LeReche and Keith Sinclair were absent.

Staff present during the meeting: Lesa Yeatts, Town Attorney; John Orrison, Building Official; Kelli Malone, Board Secretary/Public Works Permit Technician; and Kirstyn Barr Jovanovich, Town Clerk.

Determination of a Quorum

Chairperson Lange determined there was a quorum, and the meeting duly constituted with three members present. Board Members LeReche and Sinclair were absent.

2. Organizational Meeting Item

a. Election of Chair

Chairperson Lange opened the floor for nominations for the 2024-2025 Chair of the Building Board of Appeals.

Board Member Wijdoogen nominated Board Member William Lange as Chair and moved to elect Board Member Lange as the Chair of the Building Board of Appeals. Board Member Clark seconded the motion.

Seeing no further nominations, Chairperson Lange closed the nominations process.

The question was called on the motion to elect Board Member Lange as the Chair of the Building Board of Appeals, which was approved by 3-0 roll call vote. The vote was: Board Members Clark and Wijdoogen, and Chairperson Lange voting "Aye." Board Members LeReche and Sinclair were absent.

3. Approval of Minutes

a. February 27, 2023 Building Board of Appeals Meeting Minutes

Board Member Clark moved to approve the February 27, 2023, Building Board of Appeals Meeting Minutes, as presented. Board Member Wijdoogen seconded the motion.

The question was called on the motion, which was approved by 3-0 roll call vote. The vote was: Board Members Clark and Wijdoogen, and Chairperson Lange voting "Aye." Board Members LeReche and Sinclair were absent.

4. Presentation

a. Virginia Uniform Statewide Building Code Updates

Chairperson Lange recognized John Orrison, Building Official, to provide a presentation on recent updates to the Virginia Uniform Statewide Building Code (USBC).

Mr. Orrison presented a PowerPoint, which reviewed the 2021 administrative updates to the USBC including: (1) requirements for playground equipment, (2) fee collection and refunds, (3) swimming pool permits, (4) permit processing, (5) code changes related to "unsafe structures," (6) certificates of occupancy, (7) emergency repairs and demolition, and (8) street closures.

5. Comments

a. Comments from Board Members

Board Member Clark: Asked staff a question about playground equipment exemptions.

Board Member Lange: no comments.

Board Member LeReche: absent.

Board Member Sinclair: absent.

Board Member Wijdoogen: no comments.

b. Comments from Staff Members

There were no comments from the staff.

c. Comments from the Public

Chairperson Lange reviewed the process for public comment and asked those who wanted to provide Comments from the Audience to come forward.

There were no comments from the audience.

6. Adjournment

There being no further business, Chairperson Lange adjourned the February 29, 2024 Building Board of Appeals meeting at 5:55 p.m.

Kelli Malone
Board Secretary

Minutes approved by Building Board of Appeals: _____

DRAFT



**Building Board of Appeals
Board of Building Code Appeals
Annual Meeting
Agenda Item 5.a.**

Agenda Item: Local Board of Building Code Appeals Training

Meeting Date: February 27, 2025

Category: Presentation

Prepared by: John Orrison, Building Official

Description:

W. Travis Luter, Sr., Secretary to the State Building Code Technical Review Board Code and Regulation Specialist, Virginia Department of Housing and Community Development (DHCD), will provide a training presentation to the Board, which will include a review of the Board's roles and responsibilities; the appeals process; and other training updates as may be relevant to the Board.

Background:

N/A

Fiscal Impact:

N/A

Staff Recommendation/Next Steps:

This is a discussion item; staff does not have a recommendation.

Attachments:

1. PowerPoint



**VIRGINIA DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT**

DHCD is committed to creating safe, affordable and prosperous communities to live, work and do business in Virginia.



Presented by:

W. Travis Luter, Sr.

Secretary to the State Building
Code Technical Review Board

Contents of the Training Packet

- Local Appeals Boards Training Presentation
- The Local Building or Fire Prevention Code Boards of Appeals Manual
- 2021 Virginia Construction Code Section 119
- 2021 Virginia Maintenance Code Section 107
- 2021 Virginia Statewide Prevention Code Section 112
- 2021 Virginia Amusement Device Regulations
- Related Sections of the Code of Virginia
 - §36-105 and §2.2-3100

Part I: Understanding the Freedom of Information Act (FOIA)

Part II: The Local Board of Building Code Appeals (LBBCA)

Part III: The Key Differences for Property Maintenance Code and Amusement Device Regulation Appeals

Part IV: The Key Differences for Fire Prevention Code Appeals

Part V: Recommendations and Best Practices for LBBCA members and secretaries

Part VI: State Building Code Technical Review Board

Part VII: Beyond the Review Board

Part VIII: Historical Review Board Decisions

Abbreviations Used in this Training

DGS; DEB	VA Dept. of General Services; Div. of Engineering and Buildings
LBBCA	Local Board of Building or Fire Code Appeals
LBFPCA	Local Board of Fire Prevention Code Appeals
SFMO	State Fire Marshal's Office
SFPC	Virginia Statewide Fire Prevention Code
TRB	State Building Code Technical Review Board
VADR	Virginia Amusement Device Regulations
VCC	Virginia Construction Code
VPMC	Virginia Property Maintenance Code

Understanding the Freedom of Information Act (FOIA) as it relates to a local board of building code appeals



Part I: Understanding the Freedom of Information Act (FOIA)

Topics covered in this training

- Public Body
- Meetings
- Meeting Notice
- Violations and Penalties

Disclosure

This section of the training is provided to generally inform you of how the FOIA law may apply to your local appeals board. I am neither an attorney nor providing legal guidance or advice. I suggest seeking specific guidance/advice from your locality attorney about the FOIA law and how it specifically applies to your local appeals board.

Meetings

- All meetings of public bodies shall be **open**, except as provided in §§ 2.2-3707.01 and 2.2-3711.
- *Exceptions:*
 - §§ 2.2-3707.01 – *Meetings of the General Assembly*
 - 2.2-3711 – *Closed meetings authorized for certain limited purposes*

Public Body

"Public body" means any legislative body, authority, board, bureau, commission, district, or agency of the Commonwealth or of any political subdivision of the Commonwealth, **including counties, cities, and towns, municipal councils, governing bodies of counties,** school boards, and planning commissions; governing boards of public institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds. It shall include . . . (ii) **any committee, subcommittee,** or other entity however designated of the public body created to perform delegated functions of the public body or to advise the public body [...]

When are you having a meeting?

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or as an informal assemblage of (i) **as many as three members or (ii) a quorum**, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.

When are you having a meeting? (cont.)

Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body at any place or function where **no part of the purpose of such gathering or attendance is the discussion or transaction of any public business**, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body . . . shall be deemed a "meeting" subject to FOIA.

Meeting Notice

Every public body shall give notice of the date, time, location, and remote location, if required, of its meetings by:

- Posting such notice on its official public government website, if any;
- Placing such notice in a prominent public location at which notices are regularly posted; and
- Placing such notice at the office of the clerk of the public body or, in the case of a public body that has no clerk, at the office of the chief administrator.

The notice shall be posted at least three working days prior to the meeting.

When a meeting is always required

- § 2.2-3710. Transaction of public business other than by votes at meetings prohibited.
- A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter.

Situation 1:

The local appeals board gathers annually to elect the new Chair.

- Meeting under FOIA?

Situation 2:

The local appeals board gathers virtually to approve the previous meetings decisions and/or minutes.

- Meeting under FOIA?

Situation 3:

At a charity event, you see two local appeals board members standing together. You pleasantly greet them and make small talk.

- Meeting under FOIA?
- Can the three of you make plans to watch the latest episode of Yellowstone featuring Kevin Costner?
- Can you reminisce together about the previous meeting at the charity event or while watching Yellowstone?

Situation 4:

You write an email to all the other members sharing a brand new movie trailer. A fellow member responds all. Yet another member quickly responds all on the same topic.

- Meeting under FOIA?
- Is it a “closed” meeting?
- What if one of the members inquires about an upcoming hearing or meeting?

Situation 5:

You open an instant message chat online between three board members?

- Meeting under FOIA?
- What if only two board members?
- What if the topic of discussion was screening the movie at future board meeting?

Note: Timeline of communication could be a factor.

§ 2.2-3714. Violations and penalties

In a proceeding commenced against any officer, employee, or member of a public body under . . . , the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his **individual capacity**, whether a writ of mandamus or injunctive relief is awarded or not, **a civil penalty of not less than \$500 nor more than \$2,000**, which amount shall be paid into the Literary Fund. For a **second or subsequent violation**, such civil penalty shall be not less than **\$2,000 nor more than \$5,000**.

§ 2.2-3714. Violations and penalties (cont.)

In addition to any penalties imposed pursuant to subsections A and B, if the court finds that a public body voted to certify a closed meeting in accordance with . . . , the court may impose on the **public body**, whether or not a writ of mandamus or injunctive relief is awarded, a **civil penalty of up to \$1,000**, which amount shall be paid into the Literary Fund. [...]

Questions about FOIA or FOIA Training

Please contact:

Virginia Freedom of Information Advisory Council

Toll free: 866-448-4100

Email: foiacouncil@dls.virginia.gov

Topics covered in this training

- ✓ Understanding the Freedom of Information Act (FOIA)
- The Local Board of Building Code Appeals (LBBCA)
- The Key Differences for Property Maintenance Code and Amusement Device Regulation Appeals
- Local Board of Fire Prevention Code Appeals (LBFPCA)
- Recommendations and Best Practices for Local Board Members and Secretaries
- State Building Code Technical Review Board (Review Board)
- Beyond the Review Board
- Historical Board Decisions

Local Board of Building Code Appeals - LBBCA

What questions do you have about FOIA as it relates to the local board of building code appeals?



Local Board of Building Code Appeals



Part II: The Local Board of Building Code Appeals (LBBCA)

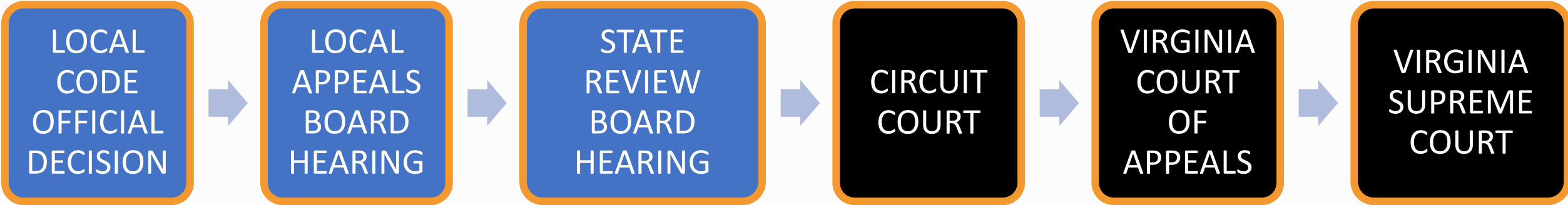
Topics covered in this training

- Purpose of the appeals process
- Steps in the appeals process
- Purpose and Overview of the Local Appeals Board
- LBBCA Code Requirements

Purpose of the Code Appeals Process

“To provide a means for having a code official’s decision reviewed by an independent body to assure the applicable code is being enforced properly”

Steps in the Appeals Process



How many individuals here today knew that the local appeals board decision had a clear path to the Virginia Supreme Court?

Purpose – Local Appeals Board

Local appeals boards play an important role in building and fire code enforcement in Virginia as they are the critical first step in the overall appeals process.

Local Appeals Board – Critical First Step

- The local appeals board, prior to considering the merits (code violations) of any case, must first consider **jurisdictional issues** such as:
 - application of the code
 - properness before the Board
 - timeliness
 - right to appeal
 - aggrievement

VCC 119.1 - Establishment of LBBCA

- Code of VA 36-105 mandates each local building department establish and maintain a local appeals board
- May have one local board that hears all appeals, **or may establish separate local boards** for building, fire, trades, property maintenance, etc.
 - Alternatively, the locality can enter into an agreement with another locality, other agency, or a state agency approved by DHCD
- Fees may be charged to offset the cost of appeals, but may not be so high as to deter the filing of appeals
- Local board must meet as necessary to assure a duly constituted board, elect officers, and to receive training

VCC 119.2 – Membership of the LBBCA

- At least 5 members appointed by each local government body, for specific terms and by written policy; Alternate members should be appointed
- Written record of current membership must be maintained in local government office
- To provide continuity, terms of the local board members should be different lengths so less than half will expire in any one-year period
- Members are not required to reside in the locality of the board for which they serve (or in Virginia for localities that border other states)

VCC 119.3 – Officers and Qualifications of LBBCA Members

- The LBBCA shall annually select one of its regular members to serve as chairman
- Members are selected on ability to render fair and competent decisions
- Members should represent different occupational and professional fields relating to the construction industry
- Employees or officials of the locality shall not serve on the local board (likely a conflict of interest)

VCC 119.3 – Officers and Qualifications of LBBCA Members (cont.)

Membership of the Local Appeals Board should be a minimum of:

1 Registered
Design
Professional

1 Experienced
Builder

1 Property
Manager

Recommended but optional:

1 Consumer
or Public Rep.

1 Trade
Contractor

VCC 119.3 – Officers and Qualifications of LBBCA Members (cont.)

- The local board must select a Chair among its members. If the Chair is not present at a meeting, they must appoint an Acting Chair for that meeting
 - Elect a Vice Chair to avoid this issue
- The local government Board or CEO shall appoint an appeals board secretary (cannot be the Building Official, but could be staff of the Building Official)

VCC 119.4 – Conduct of LBBCA Members

- Member shall not hear an appeal if that member has a conflict of interest (COV Section 2.2-3100 et seq.)
- Member must recuse themselves (from that specific hearing) if any connection, such as:
 - Know the party or parties
 - Are somehow connected to, or have a financial interest in the project or property

VCC 119.4 – Conduct of LBBCA Members (cont.)

- Members shall not discuss cases with involved parties or their representatives prior to any hearings
- COV Section 2.2-3115 requires that members of local boards file a **personal interest disclosure form** annually on or before February 1st

VCC 119.5 – Right of Appeal; Filing an Application

Who can file an appeal to the Local Board of Building Code Appeals?

- Anyone ***aggrieved*** by the application of the USBC or the refusal to grant a modification to the provisions of the USBC by a local building department

VCC 119.5 – Right of Appeal; Filing an Application

- All appeals applications shall be processed and presented to the local appeals board for consideration pursuant to the requirement in the code
- No one person can decide whether an appeal is to be heard by any local appeals board (Code official, dept. staff, County/City Administrator, County/City Attorney, etc.)

Note: Decisions of the Virginia DGS; DEB are appealed directly to the Review Board.

VCC 119.5 – Right of Appeal; Filing an Application (cont.)

What is an “application” of the code?

VCC 119.5 – Right of Appeal; Filing an Application (cont.)

**Is a verbal decision of the code official an
“application” of the code?**

Applications of the code that are appealable:

- An inspection ticket or report
- A notice of corrective work
- A notice of violation
- An official letter from the code official
- An email from the code official
- A verbal decision by the code official

VCC 119.5 – Right of Appeal; Filing an Application (cont.)



How long does someone have to file an appeal to the LBBCA?

Written appeal must be filed **within 30 calendar days of receipt** of the decision being appealed – late applications can be considered at the discretion of the local board of appeals

VCC 119.5 – Right of Appeal; Filing an Application(cont.)

Application Requirements and Considerations

- All applications must be marked by the local appeals board, usually the Secretary, indicating the date received
- Applications must have the following:
 - Name and address of the building owner
 - Name of the person appealing
 - A copy of the Building Official's decision

VCC 119.6 – Meeting and Postponements of the LBBCA

- Board shall meet within **30 calendar days** from receipt of an appeal application (or 45 where the Board has regularly scheduled monthly meetings)
- Formal notice of the time and place of the hearing shall be sent to all parties in writing at the address listed on the application if requested or by electronic means at least **14 calendar days** before the hearing
- If a quorum is not present, any party can request postponement, which shall be within 30 calendar days

Note: Longer time periods for each of these shall be permitted if agreed to by all parties involved in the appeal

VCC 119.7 – Hearings and Decisions of the LBBCA

- All local appeals board meetings and hearings must be open to the public
- The appellant, its representative, the locality's representative, and any person whose interests are affected by the Building Official's decision shall be given the opportunity to be heard (public comment)
- Each party can bring witnesses to offer testimony
- The Chair shall have the power and duty to:
 - Direct the hearing
 - Rule upon the acceptance of evidence
 - Oversee the record of all proceedings

VCC 119.7 – Hearings and Decisions of the LBBCA (cont.)

- The local board can uphold, reverse, or modify a Building Official's decision by a majority vote of those present that heard the appeal (except members who recused themselves).
- The decision of the local board is binding unless further appealed to the Review Board.
- Decisions shall be documented, signed by the Chair, include a statement of further right of appeal (see specific language in Section 119.7), and retained as part of the appeal record.
- Copies shall be sent to all parties by certified mail.

VCC 119.7 – Hearings and Decisions of the LBBCA (cont.)

Local Board Decisions shall contain the following wording:

- *“Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of this decision. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150.”*

VCC 119.8; SFPC 112.9 & VMC 107.8 - Appeals to the Review Board

- Any person who was a party to the local appeal may appeal further to the Review Board
- Appeals shall be filed within **21 calendar days of the receipt** of the local appeals board decision to be appealed
 - Appeals from the State Fire Marshal's Office enforcement of the code shall be filed to the Review Board within 14 calendar days of the decision
 - Appeals for Amusement Devices shall be filed to the Review Board within 14 calendar days
- Failure to submit application in that timeframe constitutes acceptance of the code official's decision

Topics covered in this training

- ✓ Understanding the Freedom of Information Act (FOIA)
- ✓ The Local Board of Building Code Appeals (LBBCA)
- The Key Differences for Property Maintenance Code and Amusement Device Regulation Appeals
- Local Board of Fire Prevention Code Appeals (LBFPCA)
- Recommendations and Best Practices for Local Board Members and Secretaries
- State Building Code Technical Review Board (Review Board)
- Beyond the Review Board
- Historical Board Decisions

Local Board of Building Code Appeals - LBBCA

What questions do you have about the local board of building code appeals?





Key Differences for Property Maintenance Code Appeals

Part III: The Key Differences for Property Maintenance Code and Amusement Device Regulation Appeals

Topics covered in this training

- Establishment of the property maintenance appeals board
- Right of appeal (who can file an appeal)
- Timeline for appeal for property maintenance and amusement devices
- Assistance when a disagreement between owners or operators and the local building department
- Property Maintenance Scenario

Key Differences for Property Maintenance Appeals

- **VPMC 107.1 – Establishment of appeals board**
 - No separate board for property maintenance required
- **VPMC 107.5 – Right of appeal; filing an appeal application**
 - “Any person aggrieved by the local enforcing agency’s application of this code or the refusal to grant a modification...”
 - Appeal to LBBCA within **14 calendar days** of receipt of local enforcing agency’s decision

Note: Not 30 calendar days, as it is with LBBCA

Consider this Property Maintenance Appeal Scenario:

- **Property Maintenance Official (PMO) receives a complaint about a dilapidated home**
- **PMO investigates and determines that no property maintenance violations exist on the property**

Property Maintenance Appeal Scenario (cont.):

Can the complainant (next door neighbor) file an appeal to attempt to overturn the PMO's decision that no violations exist?

Property Maintenance Appeal Scenario (cont.):

Answer: Yes

It is up to the appeals board to decide the jurisdictional issue of aggrievement.

Key Differences for Amusement Device Regulations Appeals



Key Differences for Amusement Device Appeals

- **VCC 119.5 – Right of appeal; filing an appeal application**
 - “The owner of a building or structure, the owner’s agent or any other person involved in the use of a building or structure...” (13VAC 5-31-60)
- **VADR - 13VAC5-31-60. Appeals**
 - Amusement device appeals have shorter timeframes
 - **14 calendar days** from receipt of decision of local building dept. to appeal decision to LBBCA
 - **7 calendar days** for LBBCA to hear appeal from application date
 - **14 calendar days** from receipt of decision to file appeal to Review Board
 - **No minimum** timeframes for notifying parties of the hearing

Key Differences for Amusement Device Appeals

- Amusement devices on state –owned property, VA Dept. of General Services; Division of Engineering and Buildings - DGS; DEB - acts as the Building Official; therefore, appeals would go directly to the Review Board
- 13VAC 5-31-60 also includes a DHCD related note:

Note: “Because of the short time frames normally associated with amusement device operations, DHCD staff will be available to assist in finding a timely resolution to disagreement between owners or operators and the local building department upon request by either party.”

Topics covered in this training

- ✓ Understanding the Freedom of Information Act (FOIA)
- ✓ The Local Board of Building Code Appeals (LBBCA)
- ✓ The Key Differences for Property Maintenance Code and Amusement Device Regulation Appeals
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Key Differences for Property Maintenance and Amusement Device Appeals

What questions do you have about the key differences for property maintenance code and amusement device regulation appeals?



Key Differences for Local Board of Fire Prevention Code Appeals



Part IV: The Key Differences for Fire Prevention Code Appeals

Topics covered in this training

- Establishment of the fire prevention code appeals board
- Membership of the fire prevention code appeals board
- Right of appeal (who can file an appeal)
- Timeline for appeal for property maintenance and amusement devices
- Notice of meetings
- Hearing procedures

112.1 Local Board of Fire Prevention Code Appeals (LBFPCA)

- Every locality that enforces the VA Statewide Fire Prevention Code (SFPC) must have an LBFPCA to hear appeals
 - Can be incorporated into the LBBCA - does not have to be a separate board

Note: When a locality does not adopt and enforce the SFPC and the State Fire Marshal's office (SFMO) performs inspections in a locality; all SFMO decisions are appealed directly to the Review Board.



112.2 Membership of the LBFPCA

- Shall meet **annually** to select a chair, otherwise meet as needed

112.3 Qualifications of Members of LBFPCA

- Should consist of at least one of the following

1 Registered
Design
Professional

1 Experienced
Builder

Recommended but optional:

1 Consumer
or Public Rep.

1 Trade
Contractor

1 Property
Manager



Note: A property manager is not suggested in the SFPC (like it is in the VCC)

112.5 Application of appeal to the LBFPCA

Who can File a Fire Prevention Code Appeal?

- “The **owner of a structure, the owner’s agent or any other person involved in the maintenance of the structure** may appeal a decision of the fire official concerning the application of the SFPC or the fire official’s refusal to grant modifications under Section 106.5...of the SFPC.”
 - Notice this does not say “anyone aggrieved”
 - Yes, a commercial tenant or occupant may file an appeal
- Appeal must be filed within **14 calendar days of application of the SFPC** (vs. 30 days for LBBCA appeals)



112.6 Notice of Meeting for the LBFPCA

- Must meet within 30 calendar days of the appeal filing
- Formal notice of hearing must be sent at least 14 calendar days before*



Note #1: There is not an allowance beyond 30 calendar days where the Board has regularly scheduled monthly meetings, as it is with LBBCA

Note #2: There is not an allowance for electronic notice, as it is with LBBCA

112.7 Hearing Procedures for the LBFPCA

- If a quorum is not present, any party can request postponement, which shall be within 30 calendar days
 - Notice there is no extension to the 30 days allowed, as it is with LBBCA



Topics covered in this training

- ✓ Understanding the Freedom of Information Act (FOIA)
- ✓ The Local Board of Building Code Appeals (LBBCA)
- ✓ The Key Differences for Property Maintenance Code and Amusement Device Regulation Appeals
- ✓ Local Board of Fire Prevention Code Appeals (LBFPCA)
 - Recommendations and Best Practices for Local Board Members and Secretaries
 - State Building Code Technical Review Board (Review Board)
 - Beyond the Review Board
 - Historical Board Decisions

Key Differences for Fire Prevention Code Appeals

What questions do you have about the key differences for fire prevention code appeals?



Recommendations and Best Practices

Recommendations



**BEST
PRACTICES**



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Part V: Recommendations and Best Practices for LBBCA members and secretaries

Topics covered in this training

- Recommendation and Best Practices for LBBCA members
- Recommendation and Best Practices for LBBCA secretaries
 - The appeal application
 - Date stamping, establishing the timeline of the appeal, and certified mailing
 - Processing the appeal application
 - Processing the local appeals board decision
 - Suggestions for the secretary

Recommendations and Best Practices for LBBCA Members

- Maintain professionalism at all times
- Don't be adversarial with parties, counsels, or other board members
- Don't engage in arguments with parties, counsels, or other board members
- Stick to the facts of the case during hearings; avoid discussions involving matters that do not apply (zoning, county code, personnel issues, etc.)
- Decide what parts of the local appeals board meeting will be recorded, if any

Recommendations and Best Practices for LBBCA Members

- Understand what constitutes a meeting, when you can discuss board business, and when votes can be cast/recorded/etc.
- Understand what constitutes a quorum and how to postpone a hearing when necessary
- Understand conflict of interest law and when to recuse yourself from a hearing
- Understand the code official is a party to the appeal and how a conflict of interest could occur when talking with the code official
- Understand who serves as legal counsel for the local appeals board and more importantly who does not.

Recommendations and Best Practices for LBBCA Members

- Establish policies for processing appeals and how the board will conduct business
- Establish a participant guide to assist citizens with the local appeals process
- Schedule and attend annual training to better understand your roles and responsibilities
- Use the Local Building or Fire Prevention Code Boards of Appeals Manual as a guide and refer to it often
- Contact Review Board Secretary for assistance

Review Board –Participant Guide

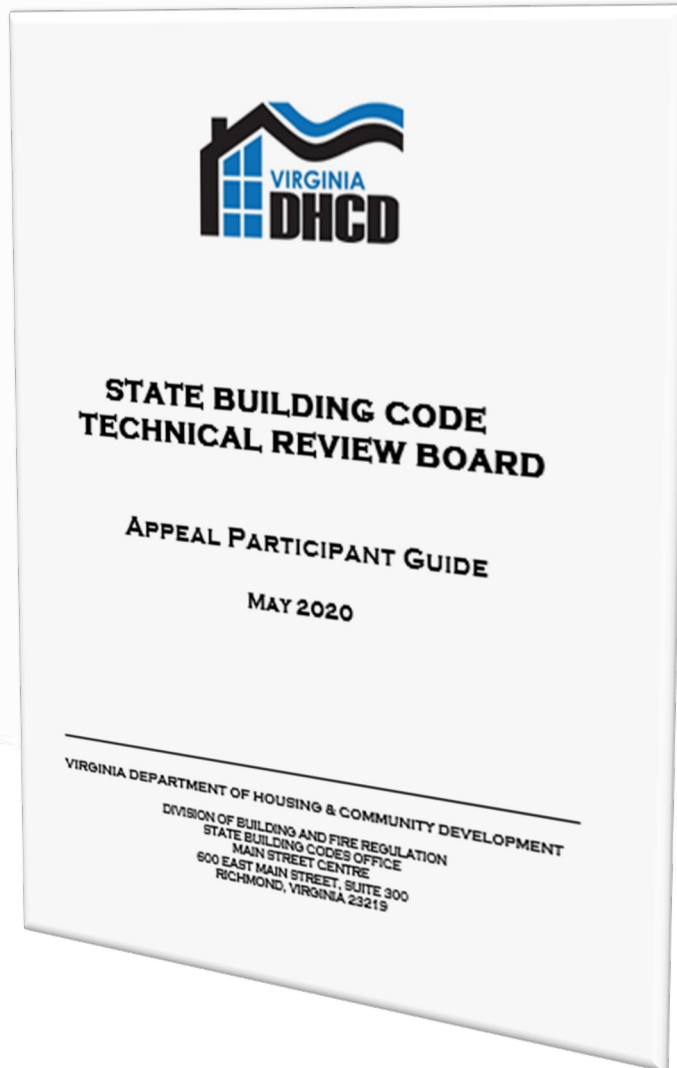


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Review Board – Policy Manual

Topics in the manual

- Processing Appeals Applications
- Processing Request for Interpretations
- Continuances
- Informal Fact Finding Conference
- Identifying Jurisdictional Issues and Issues for Resolution
- Establishment of Deadlines
- Orders of Events
- Document Management
- Hearing Time Limits



Recommendations and Best Practices for LBBCA Secretaries

The application

- All local appeals applications should have a place for the applicant to date the application, providing the “date filed” for the application
- All local appeals applications shall be date stamped when received by the local appeals board secretary to start the necessary timeline
- Applications shall have the following:
 - Name and address of the building owner
 - Name and address of the person appealing (if not the owner)
 - A copy of the Code Official’s decision

Recommendations and Best Practices for LBBCA Secretaries

Processing the local appeals board application

- Copy all parties on all appeal-related correspondence – ask appeal parties to do the same
 - If a party to the appeal does not copy all parties, send that correspondence to all parties at your earliest convenience
- Date stamp all submitted documents for an appeal when received by the local appeals board secretary
- Ensure all documents are provided to all parties and at the same time or as soon as possible when a party does not send to all parties
 - When forwarding such information indicate that you are forwarding information not shared with all parties

Recommendations and Best Practices for LBBCA Secretaries

Processing the local appeals board decision

- Accurately draft the local board decision
- Ensure the Chair reviews and signs the local board decision
 - Written document; no longer a Resolution requiring board approval)
- Local appeals board decisions shall be sent certified mail to all parties to the appeal

Recommendations and Best Practices for LBBCA Secretaries

Suggestions for the Secretary of the Local Appeals Board

- Always remain neutral and never speculate on potential local appeals board ruling
- Use electronic correspondence to more quickly get information to the parties; use read receipt or require a response for proof of the timeline
- Any correspondences that are mailed should be sent certified mail to provide proof of timeline
- Establish a robust electronic searchable database for all appeals cases

Recommendations and Best Practices for LBBCA Secretaries

Suggestions for the Secretary of the Local Appeals Board

- Draft an SOP and work instructions for the secretary to the local appeals board position outlining all tasks and responsibilities
- Understand your role as the manager of information, manager of scheduling, and manager of the local appeals board and its members
- Understand your role during an appeal and who you answer to for appeals proceedings (Board Chair not the Code Official)
- Use the Local Building or Fire Prevention Code Boards of Appeals Manual as a guide and refer to it often
- Contact Review Board Secretary for assistance

Topics covered in this training

- ✓ Understanding the Freedom of Information Act (FOIA)
- ✓ The Local Board of Building Code Appeals (LBBCA)
- ✓ The Key Differences for Property Maintenance Code and Amusement Device Regulation Appeals
- ✓ Local Board of Fire Prevention Code Appeals (LBFPCA)
- ✓ Recommendations and Best Practices for Local Board Members and Secretaries
- State Building Code Technical Review Board (Review Board)
- Beyond the Review Board
- Historical Board Decisions

Recommendations and Best Practices for LBBCA members and secretaries

What questions do you have about recommendations and best practices for LBBCA members and secretaries?



State Building Code Technical Review Board (Review Board)



Part VI: State Building Code Technical Review Board

Topics covered in this training

- Appeals
- Formal Interpretations of the Code
- Code Change Proposals

Current Review Board Members

VBCOA - VA Building &
Code Officials
Association
**Eric Mays &
James S. Moss**

American Institute of
Architects Virginia
R. Jonah Margarella

Commonwealth at
Large
**Christina Jackson &
Elizabeth White**

Home Builders
Association
Vince Butler

VA Assoc. of Plumbing,
Heating & Cooling
Contractors
**Daniel Crigler &
Alan Givens**

VA Fire Chiefs
Association
James Dawson

VA Society of
Professional Engineers
Aaron Zdinak

Association of General
Contractors
Joseph Kessler

Electrical Contractor
David Hutchins

VA Building Owners
and Managers
Joanne Monday

National Apartment
Association
Shaun Pharr

Review Board

Responsibilities

1. To hear appeals de novo (Latin “from the beginning”) of:
 - Local appeals boards
 - The State Fire Marshal’s Office
 - DGS; DEB (State-owned buildings)
 - State Building Codes Office (Industrialized buildings)
2. To issue formal code interpretations
3. To propose code changes based on previous appeals or interpretation requests

Primary Purpose of the Review Board

The primary purpose of the Review Board is to hear appeals from enforcement actions under the Virginia Uniform Statewide Building Code, Virginia Statewide Fire Prevention Code, Virginia Industrialized Building Safety Regulations, and Virginia Amusement Device Regulations.

§ 36-114. Board to hear appeals.

The Review Board shall have the power and duty to hear all appeals from decisions arising under application of the Building Code, the Virginia Amusement Device Regulations adopted pursuant to § [36-98.3](#), the Fire Prevention Code adopted under the Statewide Fire Prevention Code Act (§ [27-94](#) et seq.), and rules and regulations implementing the Industrialized Building Safety Law (§ [36-70](#) et seq.), and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom.

Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.), except that an informal conference pursuant to § [2.2-4019](#) shall not be required.

Review Board

Appeal Application

Must include a copy of:

- The code official's decision
- The local appeals board application and written decision
- The Review Board appeal application and statement of relief sought
- Any other pertinent information deemed necessary by the Secretary to the Review Board

Review Board

Timeframe to Process Appeal

- Day 1 – Application received by Review Board Secretary
- Day 7 – Email sent to all parties announcing the appeal and requesting additional information
- Day 21 – Initial submittal due from parties
- Day 35 – Review case, determine whether jurisdictional issues exist, IFFC is necessary, or to process with staff document
- Day 56 – IFFC held in the locality where the appeal originated
- Day 77 – Staff Document sent to the parties
- Day 98 – Final submittal due from the parties
- **Day 120** – Case ready for hearing before the Review Board

Review Board – Appeals

Review Board Hearing – Order of Events

- Hearing open and all parties are sworn in by the Chair
- Appellant's opening statement/Testimony by the appellant/ Witnesses for the appellant
- Cross-examination of appellant and witnesses
- Appellee's opening statement/Testimony by appellee/Witnesses for the appellee
- Cross-examination of appellee and witnesses
- Questioning by Review Board members
- Closing statements and closing of hearing
- Review Board deliberations

Review Board

Review Board Hearing – Time Limits

Appellant/Appellee's Opening Statement/Testimony by the Appellant/ Witnesses for the Appellant:

- *Time limit twenty (20) minutes for appeals hearings*
- *Time limit eight (8) minutes for preliminary hearings*

Cross-examination of Appellant/Appellee and Witnesses:

- *Time limit ten (10) minutes for appeals hearings.*
- *Time limit five (5) minutes for preliminary hearings*

Questioning by Review Board Members of the Appellant/Appellee:

- *Time limit thirty (30) minutes for appeals hearings.*
- *Time limit thirteen (13) minutes for preliminary hearings*

Closing Statements of Appellant/Appellee:

- *Time limit five (5) minutes for appeals hearings.*
- *Time limit two (2) minutes for preliminary hearings*

Review Board

Final Decisions – Final Orders of the Review Board

- Written final order is drafted by the Secretary after the meeting in which the appeal was heard
- Written final order is brought back before the Review Board for consideration and approval at the next Review Board meeting
- Once the written final order is approved, the decision becomes final, a copy of the final order is sent to all parties, and the clock starts for the parties' further appeal right to circuit court

Review Board - Continuances

If an appeal hearing is scheduled

- Review Board staff will continue an appeal upon agreement of all parties (Review Board Policy #5)

When any parties to the Appeal do not agree to the continuance

- The Secretary contacts the Chair and outlines the continuance request.
- The Chair makes the determination of whether to continue the case, and directs the Secretary when to bring the case before the Board.
(Review Board Policy #5)

Secondary Purpose of the Review Board

The secondary purpose of the Review Board is to provide interpretations to the provisions of the Virginia Uniform Statewide Building Code and Virginia Statewide Fire Prevention Code.

§ 36-118. Interpretation of Code; recommendation of modifications.

The Review Board shall interpret the provisions of the Building Code, and the Fire Prevention Code, and shall make such recommendations, which it deems appropriate, to the Board for modification, amendment or repeal of any of such provisions. A record of all such recommendations, and of the Board's actions thereon, shall be kept in the office of the Review Board. Such record shall be open to public inspection at all times during business hours.

Review Board

Formal Interpretations of the Code

The Review Board issues interpretations of the USBC and SFPC when:

- Requests are made by Code Officials or staff of the Code Official with the approval of the code official
- There is no potential or pending appeal.

Review Board

Formal Interpretations of the Code

Formal Interpretations of the Review Board are:

- Drafted by the Secretary after the meeting
- Brought back before the Review Board for consideration and approval at the next Review Board meeting
- Once approved the Interpretations are enforceable by the code officials

Does an interpretation from the Review Board require a code change to be submitted/made?

NO

Note: There is also no expiration date or time limit on interpretations

Example 1:

VCC Section 202 (Definition of “night club”)

Code Interpretation No. 1/09

First Issued: 06/17/11, 2009 Edition

QUESTION: How do you apply the “main use” terminology in the definition of night club?

ANSWER: Determining the main use of a structure is a factual question to be made at the discretion of the local official.

Example 2:

VCC Section 104.1 Code
Interpretation No. 2/06

First Issued: 06/20/08, 2006 Edition

QUESTION: In jurisdictions which have not elected to enforce the Virginia Maintenance Code, does the third paragraph of Section 104.1 give authority to investigate complaints of immediate and imminent threats to the health and safety from any complainant rather than just complaints by a tenant of a residential rental unit that is the subject of such complaint?

ANSWER: No, this provision would only apply to enforcement actions under the previous paragraph unless the locality has elected to enforce the Virginia Maintenance Code.

Example 3:

VCC Section 2801.1 (International Mechanical Code Section 602.1)

Code Interpretation No. 20/90

First Issued: 07/17/92, 1990 Edition

QUESTION: Does Section 602.1 prohibit completely sealed (combustion chamber and combustion air) fuel-fired mechanical appliances from being located in a return-air plenum?

ANSWER: Yes. Section 602.1 prohibits the installation of fuel-fired equipment in plenums. However, technical data, research reports or other information may be submitted to the code official to substantiate the approval of a modification request for the use of a specific unit listed for that purpose.

Example 4: (Code Section Information)

Interpretation Number: 1/2017

Code: USBC, Part 1, Virginia Construction Code/2012 International Swimming Pool and Spa Code (ISPSC)

Section No(s): Section 305.2.9

Section 305.2.9 Clear zone. There shall be a clear zone of not less than 36" (914 mm) around the exterior of the barrier and around any permanent structures or equipment such as pumps, filters and heaters that can be used to climb the barrier

Example 4 (cont.):

Interpretation Number: 1/2017

QUESTION #1: May a clear zone, as required by 305.2.9, be satisfied by being located on an adjacent property?

ANSWER: No, unless the pool owner has provided written legal proof of a continuing right to use the adjacent property as long as the pool exists.

QUESTION #2: Is the property owner that is constructing the swimming pool required to install barriers a minimum of 36 inches from the property line to create the clear zone on their own property?

ANSWER: Yes, unless previously satisfied by statement above.

Third Purpose of the Review Board

The third purpose of the Review Board is to make recommendations to the Virginia Board of Housing and Community Development for future modifications, amendment, or repeal of the Virginia Uniform Statewide Building Code and Virginia Statewide Fire Prevention Code.

§ 36-118. Interpretation of Code; recommendation of modifications.

The Review Board shall interpret the provisions of the Building Code, and the Fire Prevention Code, and shall make such recommendations, which it deems appropriate, to the Board for modification, amendment or repeal of any of such provisions. A record of all such recommendations, and of the Board's actions thereon, shall be kept in the office of the Review Board. Such record shall be open to public inspection at all times during business hours.

Review Board

Review Board Code Change Proposals

The Review Board may propose code changes based on previous appeals or interpretation requests when the Board finds a code change is needed and/or there is a conflict in the code.



Does anyone know how to submit a code change proposal?

Does anyone have a cdpVA
account?

Review Board

Review Board Code Change Proposals

Website:
<https://va.cdpass.com/login/>

The Deadline for Submitting Public Comments to Code Change Proposals in cdp VA was July 29th, 2022 - [Read More](#)

Virginia's Online Code Development Process

The cdpVA[®] system is Virginia's new online Code Development Process. cdpVA[®] allows you to create code change proposals, submit public comments and access any information about the Virginia Code Change Process. Virginia is a leader in building and fire code regulations, and stakeholder input is vital to Virginia's code development process. We encourage participation in this process through cdpVA[®], and ask that you invite colleagues and peers with an interest in the Virginia Code Change Process to participate.

[CLICK HERE TO REGISTER →](#)

Sign In or [Register](#)

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[Can We Help?](#) [I forgot my password I need more help](#)

Has anyone ever submitted a code change proposal?

Review Board

Example of a Code Change Proposals

Code Change Proposal Example:

CTS-305.2.9 cdpVA-15

Proponent: Ronald Clements, Jr, Representing VBCOA Board of Directors(clementsro@chesterfield.gov)

2015 International Swimming Pool and Spa Code

305.2.9 ~~Clear~~ Equipment clear zone. ~~There shall be a clear zone of not less than 36 inches (914 mm) between the exterior of the barrier and any permanent structures or~~ Equipment, including pool equipment such as pumps, filters and heaters ~~that can~~ shall not be ~~used to climb~~ installed within 36" (914 mm) of the exterior of the barrier when located on the same property.

Review Board

Review Board Code Change Proposals

Reason Statement

CTS-305.2.9 cdpVA-15 (cont.)

Reason: The requirement for a clear zone adjacent to a pool barrier prohibits placement of fences and barriers on or within 3 feet of a property line per **TRB ruling 1/2017**....

SECTION R326 SWIMMING POOLS, SPAS AND HOT TUBS

R326.1 General.

The design and construction of pools and spas shall comply with the International Swimming Pool and Spa Code.

R326.1.1 Changes to the ISPSC.

The following change shall be made to the ISPSC:

1.Change Section 305.2.9 to read:

305.2.9 Equipment clear zone. Equipment, including pool equipment such as pumps, filters, and heaters shall not be installed within 36 inches (914 mm) of the exterior of the barrier when located on the same property.

CHAPTER 31 SPECIAL CONSTRUCTION

SECTION 3109 SWIMMING POOLS, SWIMMING POOL ENCLOSURES AND AQUATIC RECREATIONAL FACILITIES

1. Change Section 305.2.9 of the ISPSC to read:

305.2.9 Equipment clear zone. *Equipment*, including pool equipment such as pumps, filters and heaters shall not be installed within 36 inches (914 mm) of the exterior of the barrier when located on the same property.

Topics covered in this training

- ✓ Understanding the Freedom of Information Act (FOIA)
- ✓ The Local Board of Building Code Appeals (LBBCA)
- ✓ The Key Differences for Property Maintenance Code and Amusement Device Regulation Appeals
- ✓ Local Board of Fire Prevention Code Appeals (LBFPCA)
- ✓ Recommendations and Best Practices for Local Board Members and Secretaries
- ✓ State Building Code Technical Review Board (Review Board)
 - Beyond the Review Board
 - Historical Board Decisions

State Building Code Technical Review Board

**What questions do you have about
the State Building Code Technical
Review Board?**



Beyond the Review Board



Part VII: Beyond the Review Board

Topics covered in this training

- Administrative Process vs. Legal Process
- Circuit Court of Virginia
- Court of Appeals of Virginia
- Virginia Supreme Court

Beyond the Review Board

Administrative Process vs. Legal Process

Once an appeal has been ruled upon by the Review Board, the administrative process ends. When an appeal case is further appealed beyond the Review Board, the case enters the court system, and the legal process begins.

Beyond the Review Board

Administrative Process vs. Legal Process

All Review Board final orders must include a further right of appeal which currently reads:

- *“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.”*

Beyond the Review Board

Virginia Circuit Court

All appeals from the State Building Code Technical Review Board have a further right to appeal to the Circuit Court in the locality in which the case originated.

Beyond the Review Board

Virginia Circuit Court



Beyond the Review Board

Virginia Circuit Court

- The party that further appeals to Circuit Court shall:
 - File a Notice of Appeal with the Review Board Secretary.
 - File, within 30 days of filing the Notice of Appeal, the Transcript of Testimony or Statement of Testimony in Narrative Form with the Secretary of the Review Board

Note: The **Petition for Appeal** is occasionally filed with the Secretary of the Review Board but is not required

Beyond the Review Board

Virginia Circuit Court

Final duties of the Review Board secretary for the appeal are:

- Email the notice of appeal to the Review Board counsel (AG representative)
- Prepare and certify the official Record of the Appeal (Per Virginia Supreme Court Rule 2A:3); includes every document filed pertaining to the case
- Review the Transcript of Testimony or Statement of Testimony in Narrative Form and if either are inaccurate, provide a response to be included in the official record of the appeal
- Distribution of the Record of the Appeal to all parties, attorneys, and the Circuit Court

Beyond the Review Board Virginia Court of Appeals



Beyond the Review Board

Virginia Court of Appeals

- Created by the General Assembly in 1983
- Provides appellate review of final decisions of the circuit courts in appeals from decisions of administrative agencies
- The Virginia Court of Appeals grants appeals of APA decisions from Circuit Courts as a right (**“an appeal of rights”**)
- Any party aggrieved by a decision of the Court of Appeals may petition the Virginia Supreme Court for an appeal.

Beyond the Review Board

Virginia Supreme Court



Beyond the Review Board

Virginia Supreme Court

- An appeal to the Virginia Supreme Court is **not “an appeal of right”**; therefore, is not automatically granted
- The Virginia Supreme Court may review decisions of the Court of Appeals if it finds that the decision of the Court of Appeals involves a substantial constitutional question as a determinative issue or matters of significant precedential value
- Otherwise, the party must petition the Virginia Supreme Court and must prove to the Virginia Supreme Court that the case is the right case for the Virginia Supreme Court to take

Topics covered in this training

- ✓ Understanding the Freedom of Information Act (FOIA)
- ✓ The Local Board of Building Code Appeals (LBBCA)
- ✓ The Key Differences for Property Maintenance Code and Amusement Device Regulation Appeals
- ✓ Local Board of Fire Prevention Code Appeals (LBFPCA)
- ✓ Recommendations and Best Practices for Local Board Members and Secretaries
- ✓ State Building Code Technical Review Board (Review Board)
- ✓ Beyond the Review Board
- Historical Board Decisions

Beyond the Board

**What questions do you have about
beyond the Board?**



Historical Review Board Decisions



Part VIII: Historical Review Board Decisions

Topics covered in this training

- Ligon (2002)
- Rave Soccer LLC (2013)
- Isle of Wight County (2016)
- Bono (2017)
- Grant (2018)
- AMcL LLC (2018)
- Parker (2018)
- Singleton (2018)
- Singleton (2019)
- Pakravan (2019)
- Sours-Atwood (2019)
- Dolan (2020)
- Fairfax County (2021)
- City of Petersburg (2021)
- TLF McClung (2022)
- Maller (2022)

Historical Review Board Decisions

- All Board cases are reviewed individually based on their specific facts and evidence.
- Board decisions do not create a precedent for future cases; however, the Board typically rules in the same manner on similar cases with similar facts

Historical Review Board Decisions – Application of the Code

Ligon – (2002)

- County notified two concrete installers of its policy dictating how long concrete forms had to be left in place
- Concrete installer filed an appeal to the LBBCA and further to the Review Board

Historical Review Board Decisions – Application of the Code

Ligon – (2002)

Outcome:

- Review Board ruled that the **appeal was invalid** since the directive did not reference any specific project or permit; therefore, **no application of the USBC had taken place**

Historical Review Board Decisions – Modification

Rave Soccer, LLC (2013)

- Building owner was granted a modification to increase the size of an A-3 (type of Assembly use) building by 300% on the condition that sprinklers be added throughout the building
- Later the building owner requested a second modification not to install sprinklers throughout the building, citing a then active USBC exception for “participant sports areas”

Historical Review Board Decisions – Modification

Rave Soccer, LLC (2013)

Outcome:

- The Building Official denied the second modification request, which was upheld by the LLBCA and the Review Board, on the basis that the building's size increase would not have been permitted originally without sprinklers throughout the building

Historical Board Decisions – Farm Building

Isle of Wight County (2016)

- Farm storage building used for sheltering the owners' horses
- Code Official created a policy using language from several other sections of the Code of Virginia relating to farm-related activities

Historical Board Decisions – Farm Building

Isle of Wight County (2016)

Outcome:

- Review Board determined that an application of the code occurred by requiring a permit and providing the owner with a copy of the County policy on exemption for farm buildings

Historical Board Decisions – Farm Building

Isle of Wight County (2016)

Outcome: (cont.)

- Review Board further ruled that Section 102.3(6) sufficiently clarifies what types of building/structures are exempt from the VCC
- Review Board further clarified that Section 102.3(6) is not based on income the owner derives from operation on the property

Historical Board Decisions – Farm Building

Isle of Wight County (2016)

Outcome: (cont.)

- Review Board further ruled that the definitions of farmer and farm structure pulled from the unrelated sections of the Code of Virginia used to develop the county policy do not apply
- Review Board ruled to overturn the Code Official and uphold the LBBCA

Historical Review Board Decisions – Aggrieved

Deborah Caldwell-Bono and Benny Bono (2017)

- Bono owned a horse farm next to a property with a farm structure occasionally used as a wedding venue
- Bono appealed the Building Official's determination of the structure as a farm building.

Historical Review Board Decisions – Aggrieved

Deborah Caldwell-Bono and Benny Bono (2017)

Outcome:

- The Review Board found that “the Bono’s are not an aggrieved party as required by the statute governing appeals under the state building code”

Virginia Court Guidance on “Aggrieved Parties”

- In Virginia Supreme Court cases, the court has held that to have standing, a person’s rights have to be affected by the disposition of the case and that **to be an aggrieved party**, the party must have **direct interest in the subject matter and an immediate, pecuniary (monetary) and substantial interest, and not a remote or indirect interest.**
- In addition, the court has held that to be aggrieved, there is a **denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon a party different from that suffered by the public generally.**

Historical Board Decisions – Remand

Anthony T Grant Jr. (2018)

- Grant appealed a violation related to the sizing of the HVAC unit
- Memo to City LBBCA from the Director of Planning and Community Development was deemed an application of the code (acting Code Official)

Historical Board Decisions – Remand

Anthony T Grant Jr. (2018)

Outcome:

- Review Board ruled that insufficient information was present to make an informed decision
- Remanded the matter back to the LBBCA for a better evaluation of the HVAC system

Historical Board Decisions – Remand Order

Anthony T Grant Jr. (2018)

“...for a better evaluation of the HVAC system based on the Manual S, J, and D calculations including all inputs to include but not limited to roof color, coefficient of shading, air changes per day, and insulated values of windows, doors, walls, ceilings and floors from the “as built” HVAC system conditions and calculations in order to make the determination as to the adequacy of the HVAC system within 60 days. The Review Board strongly suggests the City appeals board require this information from a third party HVAC contractor in addition to what may be provided by Able’s.”

Historical Review Board Decisions – Right to appeal

AMcL, LLC – (2018)

- County issued AMcL, LLC a Notice of Violation (NOV) for lack of water service to a home due to non-payment and service disconnect.
- By the time the Review Board heard the appeal, water service was restored to the home and the NOV had been rescinded.

Historical Review Board Decisions – Right to appeal

AMcL, LLC – (2018)

Note 1:

- Review Board consistently interprets that the right to appeal is tied to applications of the code and the aggrievement by applications of the code. In other words, without applications of the code or being aggrieved by applications of the code, there is no right to appeal

Historical Review Board Decisions – Right to appeal

AMcL, LLC – (2018)

Note 2:

When the building official rescinded the NOV, which is the application of the code, he removed the application of the code. The removal of the application also ended whatever aggrievement there was against AMcL. Therefore, without the NOV there is no right to appeal.

Historical Review Board Decisions – Right to appeal

AMcL, LLC – (2018)

Outcome:

- The Review Board ruled that by rescinding the NOV, the County rescinded the cited violation and application of the code; therefore, AMcL no longer had a right to appeal.

Historical Board Decisions – Properness Before the Board & Aggrieved

Raymond Parker (2018)

- Parker was the adjacent property owner where a new building was constructed and the CO issued
- Parker asserted the well on his property was too close the primary and reserve drain fields of the newly CO'ed building on the adjacent property
- Parker asserted all pertinent laws in accordance with VCC Section 116.1 were not properly enforced

Historical Board Decisions – Properness Before the Board & Aggrieved

Raymond Parker (2018)

Outcome:

- Review Board dismissed the appeal because Parker was not aggrieved by the decision of the code official to CO the new building

Virginia Court Guidance on “Aggrieved Parties”

- In Virginia Supreme Court cases, the court has held that to have standing, a person’s rights have to be affected by the disposition of the case and that **to be an aggrieved party**, the party must have **direct interest in the subject matter and an immediate, pecuniary (monetary) and substantial interest, and not a remote or indirect interest.**
- In addition, the court has held that to be aggrieved, there is a **denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon a party different from that suffered by the public generally.**

Historical Board Decisions – Placard Remand

Jack D. Singleton – (2018)

- In 2018 Singleton filed an appeal to an NOV and placard for violations existing prior to his ownership of the property
- Town re-posted NOV on Singleton's home; not the subject property

Historical Board Decisions – Placard Remand

Jack D. Singleton – (2018)

- Review Board ruled the placard was improper both in language and posting location
- Review Board remanded the placard to the Town to be re-issued with proper date and in full compliance with VMC Section 105

Historical Board Decisions – Continuation of a Previous Decision

Jack D. Singleton – (2019)

- In 2019 Singleton filed an appeal to the revised placard and NOV which were re-issued by the Town in accordance with the Review Board ruling on Appeal No.18-09

Historical Board Decisions – Continuation of a Previous Decision

Jack D. Singleton – (2019)

Outcome:

- Review Board ruled it was a continuation of the decision issued for Appeal 18-09; therefore, the matter was not properly before the Board as no new application of the code or decision by the code official had been made and the case was dismissed

Historical Board Decisions – Right to appeal

Janett Fisher Pakravan – (2019)

- City performed issued a NOV citing violations to the HUD Housing Quality Standards and VMC
- Pakravan filed an appeal for enforcement of HUD Housing Quality Standards and VMC
- City later rescinded the VMC violations while keeping the HUD Housing Quality Standards violations in place

Historical Board Decisions – Right to appeal

Janett Fisher Pakravan – (2019)

Note 1:

- Review Board consistently interprets that the right to appeal is tied to applications of the code and the aggrievement by applications of the code. In other words, without applications of the code or being aggrieved by applications of the code, there is no right to appeal

Historical Board Decisions – Right to appeal

Janett Fisher Pakravan – (2019)

Note 2:

- When the City rescinded the violations, which is the application of the code, it removed the application of the code. The removal of the application of the code also ended whatever aggrievement there was against Ms. Pakravan. Therefore, without the cited violations there is no right to appeal.

Historical Board Decisions – Right to appeal

Janett Fisher Pakravan – (2019)

Outcome:

- The Review Board ruled that by rescinding the NOV, the County rescinded the cited violation and application of the code; therefore, Pakravan no longer had a right to appeal.

Historical Board Decisions – Conflict of Interest

Sours-Atwood And Buracker Construction – (2019)

- Sours-Atwood filed three appeals to the LBBCA and further to the Review Board
- Conflicts of interest at the LBBCA were presented to Review Board hearing by Sours-Atwood in opening statements

Historical Board Decisions – Conflict of Interest

Sours-Atwood And Buracker Construction – (2019)

Outcome:

- Review Board remanded all three cases back to the LBBCA to address the conflicts of interest and to be re-heard if conflicts existed
- Each LBBCA member was directed to seek a written opinion from the County Commonwealth Attorney or COIA Council to determine whether their participation violated COIA

Historical Board Decisions – Conflict of Interest

Sours-Atwood And Buracker Construction – (2019)

Outcome:

- Conflicts of interest existed; therefore, all three appeals were re-heard by the LBBCA

Historical Board Decisions – Lack of Action = Application of the Code

Sours-Atwood And Buracker Construction – (2019)

- Sours-Atwood filed three appeals for violations found by an independent inspection agency after the issuance of the CO
- Independent inspection report was evaluated by the owner and forwarded to the code official with a request for an inspection
- Code Official performed a site inspection, reviewed the report, and cited some violations; others not cited were appealed

Historical Board Decisions – Lack of Action = Application of the Code

Sours-Atwood And Buracker Construction – (2019)

Outcome:

- Review Board heard issues from the independent inspection agency report; the owner attempted to attach the proper code sections to each
- Review Board ruled some violations existed and some violations did not exist

Historical Board Decisions – Lack of Action = Application of the Code

Dolan – (2020)

- Dolan filed an appeal for lack of action by the code official to act on his permit application
- County refused to convene the LBBCA citing no action had been taken by the code official
- Review Board Secretary informed the County of the requirement to convene the LBBCA in accordance with VCC Section 119

Historical Board Decisions – Lack of Action = Application of the Code

Dolan – (2020)

Outcome:

- LBBCA hearing was scheduled; hearing was conducted
- Appealed further to the Review Board
- Review Board ruled that “at the time of application for appeal” a decision by the code official had not occurred; discussions were still ongoing

Historical Board Decisions – Modification & Remand

Fairfax County – (2021)

- Contractor requested a modification to install cured in place pipe (CIPP) under the 2015 VCC
- County approved a modification with 11 conditions
- County failed the inspection video due to the pipe holding water
- Contractor argued the County treated the installation of CIPP as a replacement procedure rather than a rehabilitation procedure

Historical Board Decisions – Modification & Remand

Fairfax County – (2021)

Outcome:

- Review Board remanded the matter back to the County to be re-evaluated under the 2015 VEBC and for the County to work with the contractors to develop a proper submission for modification

Historical Board Decisions – Lack of Standing

City of Petersburg – (2021)

- Restaurant was operating as a nightclub without the required operational permit
- City cited several violations; ordered operations to cease and desist
- City argued the restaurant did not have a valid lease because the foreclosed property had been recently purchased by a new owner
- City further argued that the current lease was unenforceable because it had not been recorded

Historical Board Decisions – Lack of Standing

City of Petersburg – (2021)

Outcome:

- The appeal was dismissed due to the lack of standing because the restaurant had no right to occupy the commercial building based on state recordation and case law which extinguished the lease from the previous owner of the property because it was not recorded

Historical Board Decisions – Properness Before the Board

TLF McClung – (2022)

- NOV issued for a dilapidated structure referencing the city code with the right to appeal language from the VMC
- McClung never filed an appeal but the city scheduled and convened the LBBCA for a hearing
- LBBCA ruled McClung had to obtain a demolition permit and demolish the structure
- McClung further appealed to the Review Board

Historical Board Decisions – Properness Before the Board

TLF McClung – (2022)

Note:

- Review Board Secretary advised the parties that the Review Board lacked jurisdiction to hear appeals for application of city ordinances

Historical Board Decisions – Properness Before the Board

TLF McClung – (2022)

Outcome:

- Review Board dismissed the appeal stating in part that “...the City did not cite a violation to the VMC. Moreover, the local appeals board did not reference or cite a violation of the VMC in its decision. The Review Board finds that its basic law, §36-114 of the Code of Virginia, does not authorize it to hear appeals of local ordinances...”. “Additionally, the Review Board finds that it lacks jurisdiction to hear a further appeal from the decision of the appeals board predicated on a city ordinance.”

Historical Board Decisions – Remand

Maller – (2022)

- County issued NOV for construction without required permits and lack of required inspections (treehouse)
- Maller filed an appeal to LBBCA
- Code official administratively denied the owner's appeal application for being untimely
- Maller appealed to the Review Board due to the denial of a local appeals board hearing

Historical Board Decisions – Remand

Maller – (2022)

Note 1:

- Review Board secretary advised County of requirement to convene the LBBCA in accordance with VCC Section 119 and that no appeal to the Review Board shall lie prior to final determination by the LBBCA

Historical Board Decisions – Remand

Maller – (2022)

Note 2:

- County argued that the appeal was filed beyond the 30 day timeframe; therefore, the County did not have to convene the LBBCA
- County refused to convene the LBBCA to hear the appeal
- Review Board Secretary processed the appeal to the Review Board

Historical Board Decisions – Remand

Maller – (2022)

Outcome:

- The Review Board ruled “that no appeal to the Review Board shall lie prior to a final determination by the local appeals board (§36-105). Further the local appeals board, not the building official, has the authority to determine whether an appeal is timely filed. Therefore, the Review Board remands the case to the local appeals board for decision.”

Topics covered in this training

- ✓ Understanding the Freedom of Information Act (FOIA)
- ✓ The Local Board of Building Code Appeals (LBBCA)
- ✓ The Key Differences for Property Maintenance Code and Amusement Device Regulation Appeals
- ✓ Local Board of Fire Prevention Code Appeals (LBFPCA)
- ✓ Recommendations and Best Practices for Local Board Members and Secretaries
- ✓ State Building Code Technical Review Board (Review Board)
- ✓ Beyond the Review Board
- ✓ Historical Board Decisions

Historical Review Board Decisions

What questions do you have about historical Review Board decisions?



Appeals Timeframes Cheat Sheet

Code	To appeal enforcement decision to local board	To notify parties of the hearing	LLBCA Hearing	To appeal decision to TRB*
USBC	30 days from receipt of decision	14 days prior	30 days from application	21 days
SFPC	14 days from application of SFPC	14 days prior	30 days	21 days
VPMC	14 days from receipt of decision	14 days prior	30 days	21 days
VADR	14 days from receipt of decision	Not specified	7 days	14 days

* From receipt of local board decision

Additional Information and Resources – Review Board Website

<https://www.dhcd.virginia.gov/state-building-code-technical-review-board-sbctrb>

OR www.dhcd.virginia.gov/codes > then look for “State Building Technical Review Board”

Includes:

- Timeframes and FAQs
- File an Appeal (link to appeal application)
- Previous Review Board Decisions
- Local Building and Fire Prevention Code Boards of Appeals Manual
- Appeal Participant Guide

Thank You

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**VIRGINIA DEPARTMENT OF HOUSING
AND COMMUNITY DEVELOPMENT**