



AGENDA

LOCAL BOARD OF BUILDING CODE APPEALS MEETING

6:00 PM - Thursday, February 5, 2025

Town Hall, 2nd Floor East Conference Room

1. Call to Order – *Chairman Frank Stankiewicz*
2. Roll Call – *Connie Potter, Board Clerk*
3. Public Comments
4. Minutes
 - April 3, 2025 – Regular Meeting
5. Election of Officers – *Chairman Frank Stankiewicz*
 - Chairman
 - Vice Chairman
6. By-Laws - *Daniel Wells, Property Maintenance Official/Code Enforcement*
7. Adjournment



Local Board of Building Code Appeals

April 3, 2025

The Local Board of Building Code Appeals meeting of the Town of Front Royal, Virginia was held on April 3, 2025, at 6 p.m. Town Hall, 2nd Floor Conference Room.

CALL TO ORDER:

Daniel Wells called the Local Board of Building Code Appeals (LBBCA), on April 3, 2025 meeting to order at 6:00 p.m.

ROLL CALL – DETERMINATION OF QUORUM

Present: George Cline
Charles Gornowich
Christopher (Frank) Stankiewicz
Ann Shaffer
Sterling Whitehead
Michael Spence

Staff: Daniel Wells, Property Maintenance Official
George Sonnett, Town Attorney
Connie L Potter, Executive Assistant / Clerk for LBBCA

ELECTION OF OFFICERS

Chairman:

Mr. Gornowich moved, seconded by Ms. Shaffer to nominate Frank Stankiewicz as Chairman.

VOTE: Yes – Shaffer, Cline, Whitehead, Gornowich, Stankiewicz, Spence

No – N/A

Abstain – N/A

Absent – N/A

ROLL CALL

Vice Chairman:

Chairman Stankiewicz moved, seconded by Mr. Gornowich to nominate George Cline as Vice Chairman.

VOTE: Yes – Shaffer, Whitehead, Gornowich, Stankiewicz, Spence

No – N/A

Abstain – Cline

Absent – N/A

ROLL CALL



NEW BUSINESS

- By-Laws

Mr. Gornowich moved, seconded by Chairman Stankiewicz to accept the by-laws.

VOTE: Yes – Spence, Stankiewicz, Gornowich, Whitehead, Shaffer

No – N/A

Abstain – N/A

Absent – Cline

ROLL CALL

LOCAL BOARD OF BUILDING CODE APPEALS STATE TRAINING

Presented by:

W. Travis Luter, Sr., CBO

Secretary to the State Building Code Technical Review Board

Code and Regulation Specialist

Virginia Department of Housing and Community Development (DHCD)

Mr. Luter introduced himself and read a disclosure statement.

Some highlights from the training are listed below. In addition, the training provided by a Power Point presentation is also included in the minutes.

Three (3) members is a meeting. Any time you are discussing business of the Town you are holding a meeting. All meetings are open to the public. The LBBCA shall not go into a closed session. Any FOIA related questions can be directed to the Town Attorney.

The LBBCA only enforces property maintenance. The reason for the Board is to verify the Property Maintenance Official's decision. When a case is filed you only have thirty (30) days to hear it.

The Chairman should not cast a vote.

Members are not required to live in the Town, County or State of Virginia to be on the LBBCA. There is nothing in state code that speaks to residency at all. The LBBCA shall meet at least once a year to elect officers. Members should represent different occupational and professional fields relating to the construction industry.

If the chairman is not present the secretary has to open the meeting and ask for a chair. No one can open the meeting but the secretary in this situation.



There is a one (1) party consent for recording a conversation.

Individual(s) have fourteen (14) days to file an appeal. If they submit the appeal on day 15 Planning and Zoning staff have to accept the appeal and take it to the Board who will determine if it is too late and if they will or won't hear any of it.

Staff cannot help the person fill out the appeal application or fill it out for them.

A public comment section should be included on the agenda at every meeting.

The LBBCA can either uphold, overturn, or modify the Property Maintenance Officials decision. The Board should do their best to uphold or overturn the appeal. Try to stay away from modify.

As a local Board the members do not have legal counsel.

The LBBCA should approve time limits for public speakers. See example below:

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*

All cases are individual and are NOT precedence setting.

ADJOURNMENT

With no further business before the Board,

Chairman Stankiewicz moved, seconded by Mr. Gornowich to adjourn the meeting.



Local Board of Building Code Appeals

April 3, 2025

VOTE: Yes – Shaffer, Cline, Whitehead, Gornowich, Stankiewicz, Spence

No – N/A

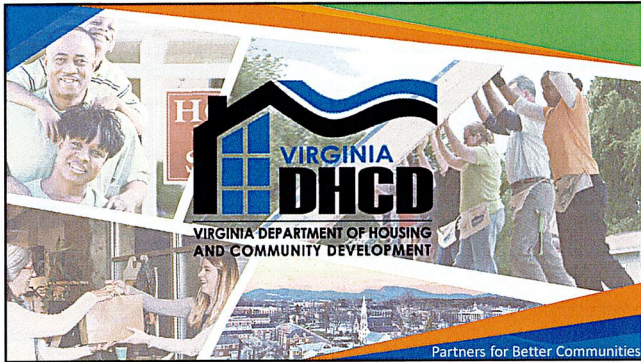
Abstain – N/A

Absent – N/A

ROLL CALL

The meeting was adjourned at 8:28 p.m.

Approved by the Local Board of Building Code Appeals
Date: _____



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Mission Statement

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



Partners for Better Communities



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Presented by:

W. Travis Luter, Sr.

Secretary to the State Building
Code Technical Review Board



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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
- Related Sections of the Code of Virginia
 - §36-105 and §2.2-3100



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

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

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

Part IV: State Building Code Technical Review Board

Part V: Beyond the Review Board

Part VI: Historical Review Board Decisions

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Part VI: 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 Code Appeals
SFMO	State Fire Marshal's Office
SFPC	Virginia Statewide Fire Prevention Code
TRB	State Building Code Technical Review Board
VCC	Virginia Construction Code
VMC	Virginia Maintenance Code

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



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

Topics covered in this training

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



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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.

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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

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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 [...]

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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.

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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.

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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.

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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.

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Situation 1:

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

- Meeting under FOIA?

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Situation 2:

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

- Meeting under FOIA?

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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?

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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?

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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.

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§ 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.

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§ 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. [...]

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Questions about FOIA or FOIA Training

Please contact:

Virginia Freedom of Information Advisory Council

Toll free: 866-448-4100

Email: foiacouncil@dls.virginia.gov

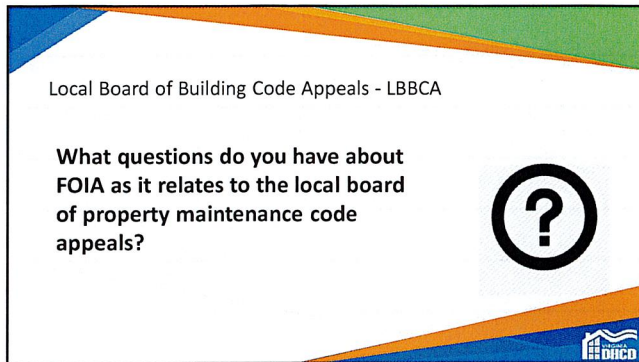
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Topics covered in this training

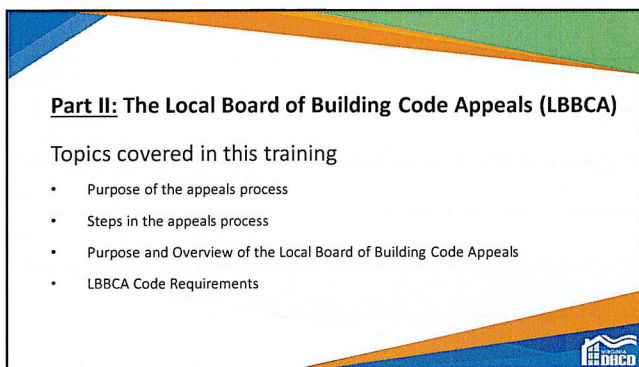
- ✓ Understanding the Freedom of Information Act (FOIA)
- The Local Board of Building Code Appeals (LBBCA)
- Recommendations and Best Practices for LBBCA members and secretaries
- Virginia State Building Code Technical Review Board (Review Board)
- Beyond the Board
- Historical Review Board Decisions



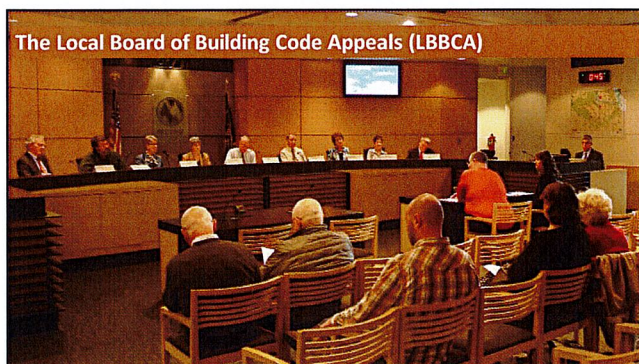
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Purpose of the Code Appeals Process

"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"



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Purpose – Local Appeals Boards

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



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Steps in the Appeals Process



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graph LR; A[LOCAL CODE OFFICIAL DECISION] --> B[LOCAL APPEALS BOARD HEARING]; B --> C[STATE REVIEW BOARD HEARING]; C --> D[CIRCUIT COURT]; D --> E[VIRGINIA COURT OF APPEALS]; E --> F[VIRGINIA SUPREME COURT]
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Local Appeals Board – Critical First Step

- Whether a local government establishes one local appeals board or multiple appeals boards, prior to considering the merits (code violations) of any case, local appeals boards must first consider **jurisdictional issues** such as:
 - Application of the code (Was there a decision of the Code Official)
 - Right to appeal (Right Person)
 - Properness before the Board (Right Place)
 - Timeliness (Right Time)
 - Aggrievement (For the Right Reason)

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VMC 107.1 - Establishment of LBBCA

- Code of VA 36-105 mandates that each local building department establish and maintain a local appeals board
 - Alternatively, the locality can enter into an agreement with another locality, other agency, or a state agency approved by DHCD
- Fees may be levied to offset the cost of appeals, but may not be so high as to deter the filing of appeals
- Board meets as necessary to assure a duly constituted board, elect officers, and to receive training on the code

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VMC 107.2 – Membership of the LBBCA

- At least 5 members must be appointed by each local government body, for a specific term, by written policy; Alternates can be appointed
- Written record of current membership must be maintained in local government office; including record of current Chair and Secretary
- To provide continuity, the terms of the members may be different lengths so that 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.

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VMC 107.3 – 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 (likely a conflict of interest)

The logo for the Littleton Board of Construction Administrators (LBBCA) is located in the bottom right corner. It features a stylized graphic of a house with a chimney, composed of blue and white geometric shapes, with the letters 'LBBCA' in blue to its right.

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VMC 107.3 – 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
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Recommended but optional:

1 Consumer or Public Rep.	1 Trade Contractor
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The logo for the Local Building Board of Central America (LBBCA) is located in the bottom right corner. It features a stylized house icon above the acronym 'LBBCA' in a bold, sans-serif font.

1 Registered Design Professional

1 Experienced Builder

1 Property Manager

1 Consumer
or Public Rep.

1 Trade Contractor

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[illegible]

VMC 107.3 – Officers and Qualifications of LBBCA Members (cont.)

- The local board must meet annually to select a Chair from its regular members.
- When the Chair is not present at a meeting, the board must appoint an Acting Chair for that meeting
- The local government Board or CEO of the locality shall appoint an appeals board secretary (cannot be the Building Official, but could be staff of the Building Official)

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VMC 107.4 – Conduct of LBBCA Members

- A member shall not hear an appeal if that member has a conflict of interest (COV Section 2.2-3100 et seq.)
- Members must not discuss cases with involved parties or their representatives prior to any hearings before the LBBCA
- A member must recuse themselves (from that specific hearing) if any connection, such as:
 - They know the party or parties OR
 - They are somehow connected to, or have a financial interest in the project or property



- ## VMC 107.4 – Conduct of LBBCA Members
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VMC 107.5 – Right of Appeal to the LBBCA; 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 VMC by a local building department
- All appeals applications must 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.



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VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application (cont.)

What is an “application” of the code?

VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application (cont.)

What is an “application” of the code?

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VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application (cont.)

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



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VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application (cont.)

Answer: Yes



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VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application (cont.)

Is a verbal decision of the code official appealable?



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VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application (cont.)

Answer: Yes

It is up to the local appeals board to decide who is telling the truth.



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Common applications of the VMC 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



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VMC 107.5 – Right of Appeal to the LBBCA; Filing an Application (cont.)



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

Written appeal must be filed **within 14 calendar days of receipt** of the decision being appealed – late applications considered at the discretion of the local board of appeals



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VMC 107.5 – Right of Appeal to the LBBCA; 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 when not the owner
 - A copy of the code official's decision



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VMC 107.6 – 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)
- A longer time period shall be permitted if agreed to by all the parties involved in the appeal



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VMC 107.6 – Meeting and Postponements of the LBBCA

- 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, but can be longer if agreed by all parties



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VMC 107.7 – 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 code 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



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[illegible]

VMC 107.7 – Hearings and Decisions of the LBBCA (cont.)

- The local board can uphold, reverse, or modify a code 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.
- Decisions are to be documented, signed by the Chair, include a statement of further right of appeal (see specific language in Section 107.7), and retained as part of the appeal record.
- Copies shall be sent to all parties by certified mail.



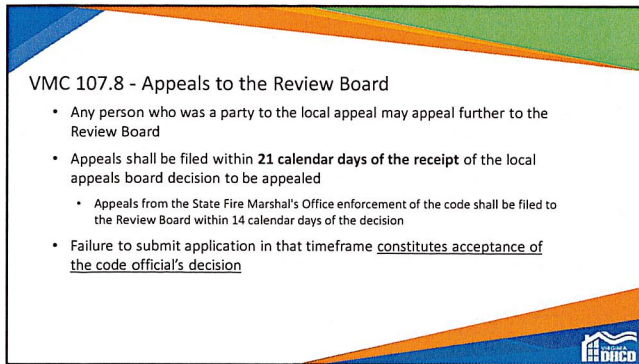
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VMC 107.7 – Hearings and Decisions of the LBBCA (cont.)

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.”*

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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
- Failure to submit application in that timeframe constitutes acceptance of the code official's decision

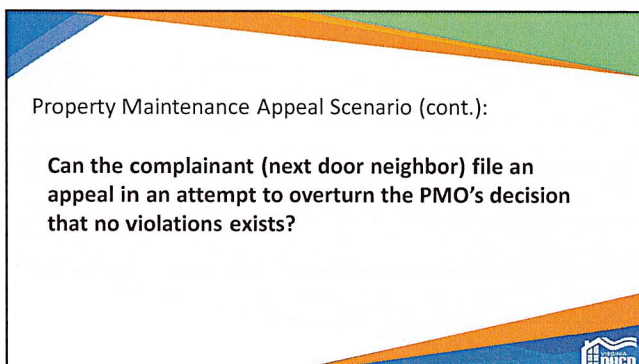
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Consider this Property Maintenance Appeal Scenario:

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

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Property Maintenance Appeal Scenario (cont.):

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

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Property Maintenance Appeal Scenario (cont.):

Answer: Yes

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



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Topics covered in this training

- ✓ Understanding the Freedom of Information Act (FOIA)
- ✓ The Local Board of Building Code Appeals (LBBCA)
- Recommendations and Best Practices for LBBCA members and secretaries
- Virginia State Building Code Technical Review Board (Review Board)
- Beyond the Board
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Local Board of Maintenance Code Appeals - LBBCA

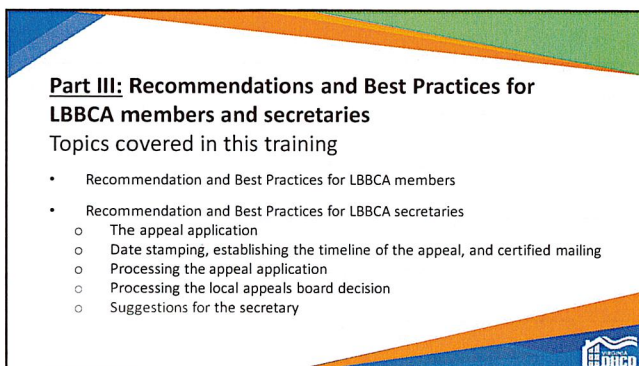
What questions do you have about the local board of building code appeals LBBCA?



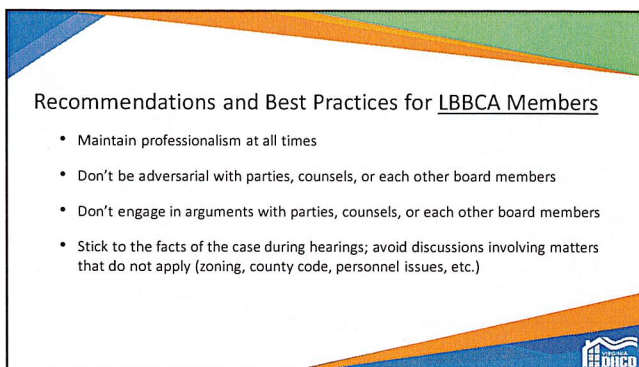
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Recommendations and Best Practices for LBBCA Members

- Decide what parts of the local appeals board meeting will be recorded, if any
- Understand what constitutes a quorum and how to continue a hearing when necessary
- Understand conflict of interest law and when to recuse yourself from a hearing
- Understand who serves as legal counsel for the local appeals board and more importantly who does not.

The logo for the Local Board of Building and Construction Contractors Association (LBBCA) is located in the bottom right corner. It features a stylized graphic of a building with a flag on top, followed by the acronym "LBBCA" in a bold, sans-serif font.

- Decide what parts of the local appeals board meeting will be recorded, if any
- Understand what constitutes a quorum and how to continue a hearing when necessary
- Understand conflict of interest law and when to recuse yourself from a hearing
- Understand who serves as legal counsel for the local appeals board and more importantly who does not.

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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



- All local appeals

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 - 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



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 - When forwarding such information indicate that you are forwarding information not shared with all parties

Processing the local appeals board decision

- 

Suggestions for the Secretary of the Local Appeals Board

- 

Suggestions for the Secretary of the Local Appeals Board

- 

Topics covered in this training

- ✓ Understanding the Freedom of Information Act (FOIA)
- ✓ The Local Board of Building Code Appeals (LBBCA)
- ✓ Recommendations and Best Practices for LBBCA members and secretaries
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- Beyond the Board
- Historical Review Board Decisions

The logo for the Local Board of Building Code Appeals (LBBCA) is located in the bottom right corner. It features a stylized graphic of a building with a flag on top, followed by the acronym "LBBCA" in a bold, sans-serif font.

- ## Topics covered in this training
- ✓ Understanding the Freedom of Information Act (FOIA)
 - ✓ The Local Board of Building Code Appeals (LBBCA)
 - ✓ Recommendations and Best Practices for LBBCA members and secretaries
- Virginia State Building Code Technical Review Board (Review Board)
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67

Recommendations and Best Practices for LBBCA members and secretaries

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

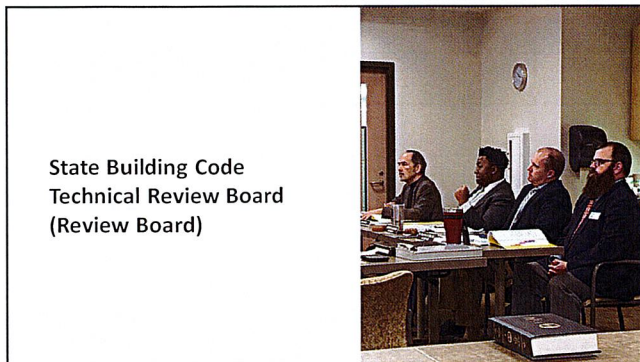
Recommendations and Best Practices for LBBCA members and secretaries

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



68

State Building Code
Technical Review Board
(Review Board)



69

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.



73

§ 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.



74

Review Board

Appeal Application

Must include a copy of:

- The maintenance 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



75

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 preliminary hearing before the Review Board



76

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



77

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



78

Review Board

Review Board Hearing – Closing the Hearing

Closing the Hearing

The Chair formerly closes the hearing. The Chair then informs the parties of the following:

- The matter will be openly considered and a decision during the open meeting
- The parties may stay to hear the deliberations of the Board; however, no further testimony will be heard
- How the final decision will be entered and distributed to the parties

*Note: There is no time limit on Board deliberations



79

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



80

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)



81

Has anyone been involved in an appeal? If so, was the case further appealed to the Review Board? Was the case further appealed beyond the Review Board?



82

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.



83

§ 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.



84

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.

85

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

86

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

87

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.



88

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.



89

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.



90

Example 4:

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



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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.



92

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.



93

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94

Review Board

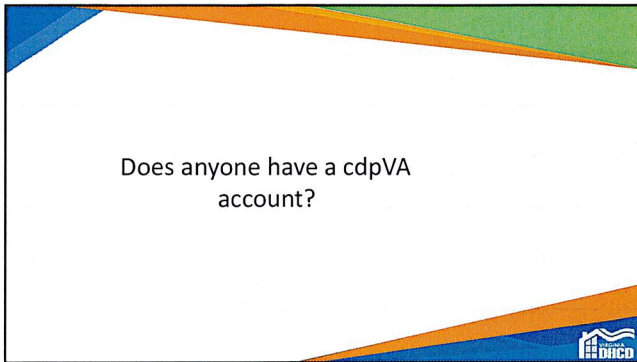
Review Board Code Change Proposals

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.

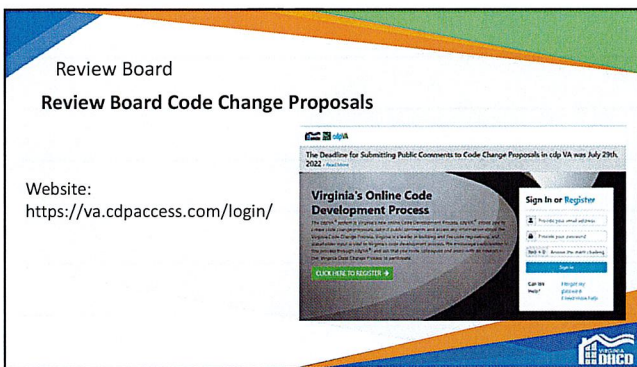
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Does anyone know how to submit a code change proposal?

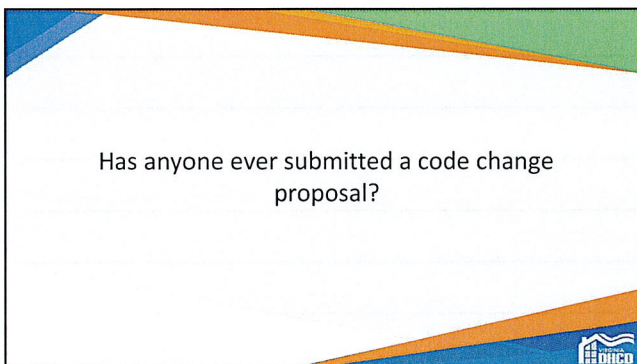
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Review Board

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.



100

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



101

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.

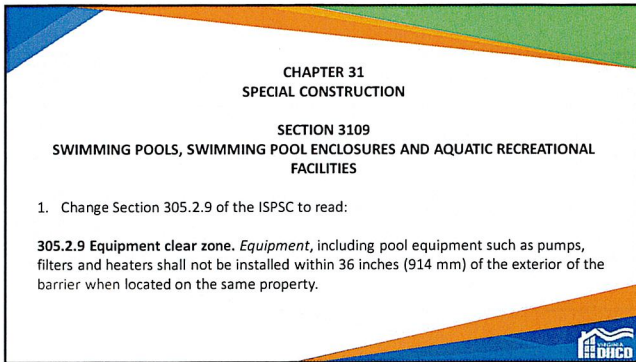
The following change shall be made to the ISPSC:

1.Change Section 305.2.9 to read:

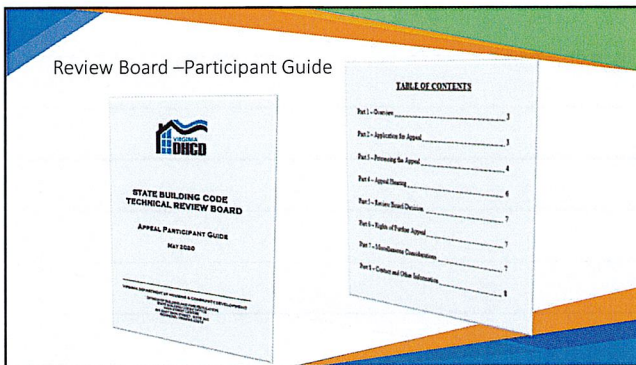
305.2.9 Equipment clear zone. Equipment, including pool equipment such as pumps, filters, and heaters shall not be installed within 36 inches (914 mm) of the exterior of the barrier when located on the same property.



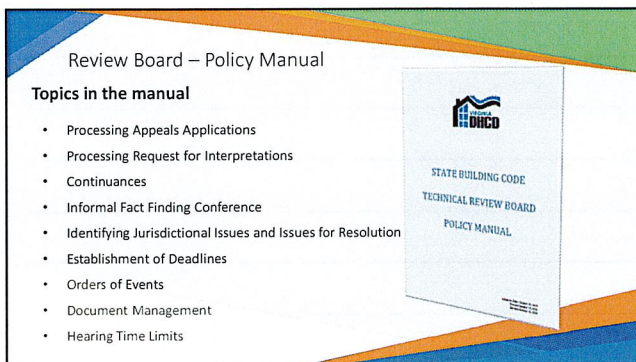
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State Building Code Technical Review Board

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

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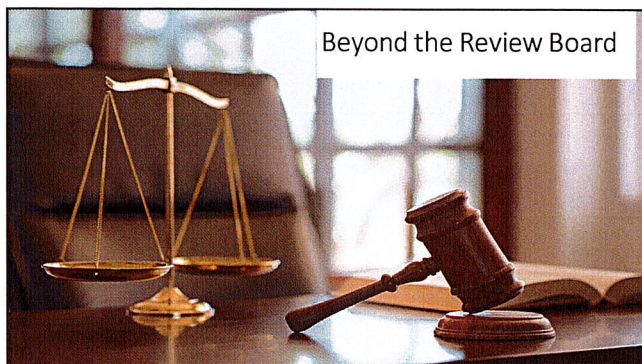
State Building Code Technical Review Board

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Beyond the Review Board



Beyond the Review Board

Part V: 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

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Beyond the Review Board

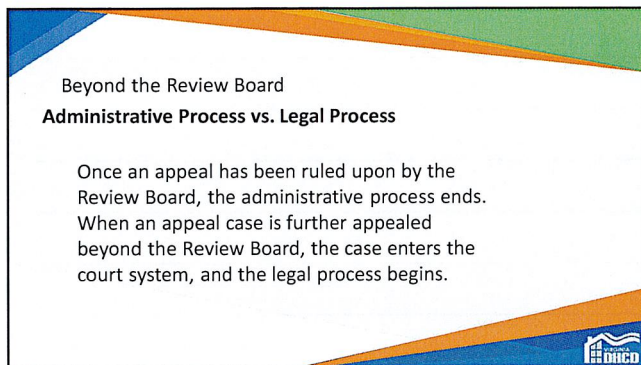
Administrative Process vs. Legal Process

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

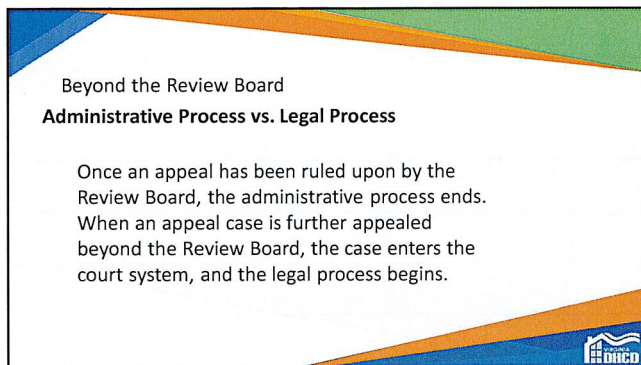
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Beyond the Review Board

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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

Administrative Process vs. Legal Process

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

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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.

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Beyond the Review Board
Virginia Circuit Court

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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

114

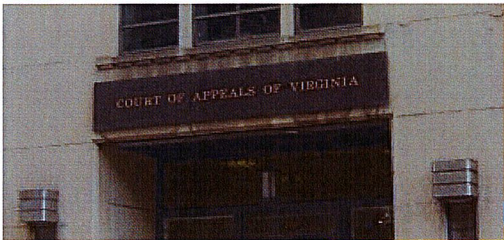
Beyond the Review Board
Virginia Circuit Court

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

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Beyond the Review Board
Virginia Court of Appeals

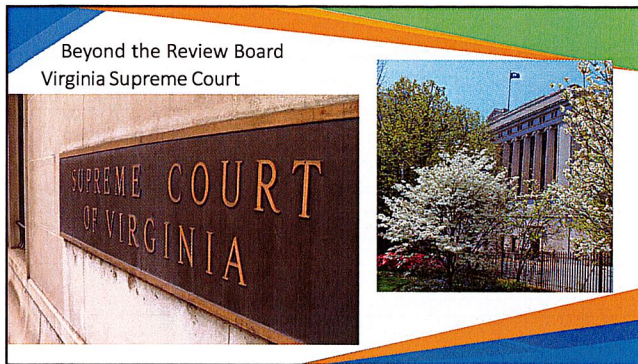


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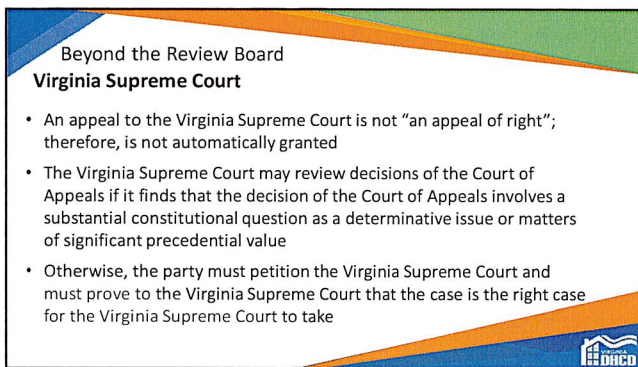
Beyond the Review Board
Virginia Court of Appeals

- 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.

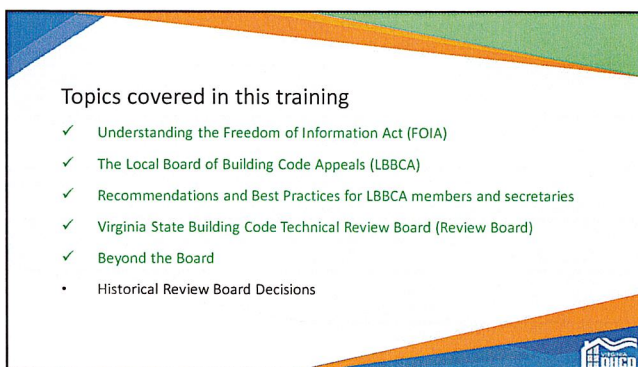
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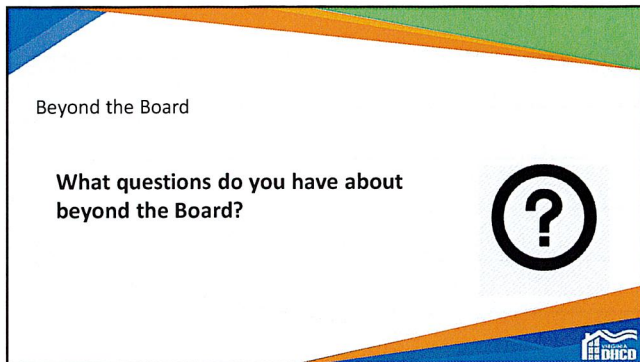
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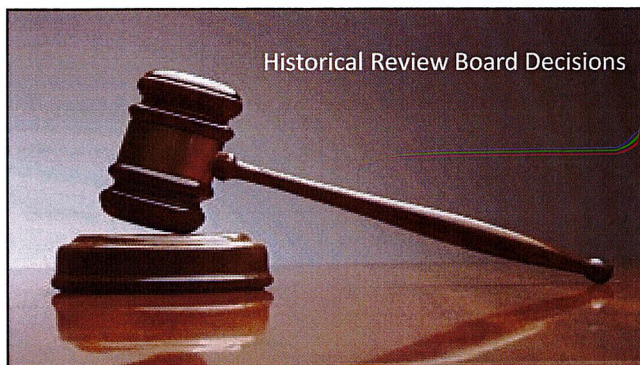
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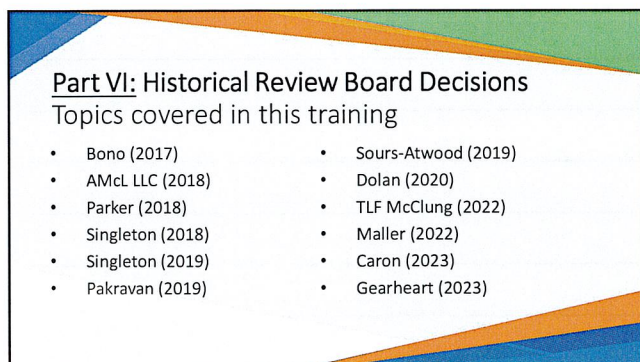
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Historical Review Board Decisions

- 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

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Historical Review Board Decisions – Aggrieved

Deborah Caldwell-Bono and Benny Bono (2017)

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

125

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.

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Historical Review Board Decisions – Right to appeal

AMcL, LLC – (2018)

- The County issued AMcL, LLC a Notice of Violation 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 notice had been rescinded.
- The Review Board consistently interpreted that the right to appeal is tied to applications of the code and the aggravement 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



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Historical Review Board Decisions – Right to appeal

AMcL, LLC – (2018)

Outcome:

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



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Historical Review 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 new building on the adjacent property
- Parker asserted all pertinent laws in accordance with VCC Section 116.1 were not properly enforced
- Review Board reviewed the appeal because Parker was not aggrieved by the decision of the code official to CO the new building



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



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- [illegible]

Historical Review Board Decisions – Continuation of a Previous Decision

Jack D. Singleton – (2019)

- In 2019 Singleton filed an appeal to the revised placard and NOV in accordance with the Board ruling on Appeal 18-09
- Review Board ruled it was a continuation of the decision issued for Appeal 18-09
- Review Board ruled the matter was not properly before the Board, no new application of the code or decision has been made, and the case was dismissed



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Historical Review Board Decisions – Right to appeal

Janett Fisher Pakravan – (2019)

- City performed an inspection and 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

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Historical Review Board Decisions – Right to appeal

Janett Fisher Pakravan – (2019)

- 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.
- 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.



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Historical Board Decisions – Conflict of Interest

Sours-Atwood And Buracker Construction – (2019)

- Sours-Atwood filed an appeal to the LBBCA and further to the Review Board
- Conflicts of interest at the LBBCA were presented to Review Board
- 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



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

Sours-Atwood And Buracker Construction – (2019)

- Sours-Atwood filed an appeal 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



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

Sours-Atwood And Buracker Construction – (2019)

- 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

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- ## Historical Board Decisions – Lack of Action = Application of the Code
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Historical Review 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
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Historical Review Board Decisions – Lack of Action = Application of the Code

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Historical Review Board Decisions – Properness Before the Board

TLF McClung – (2022)

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



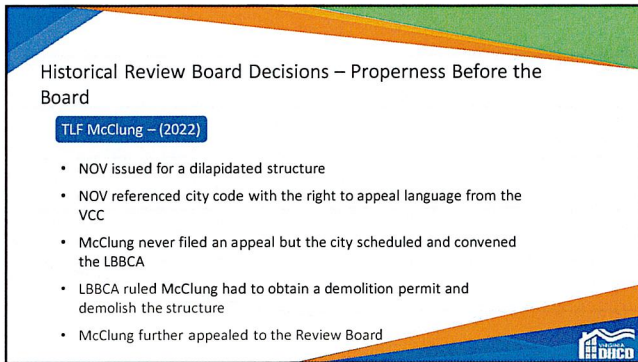
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- “Additionally, the Review Board finds that it lacks jurisdiction to hear a further appeal from the decision of the appeals board predicated on a city ordinance.”



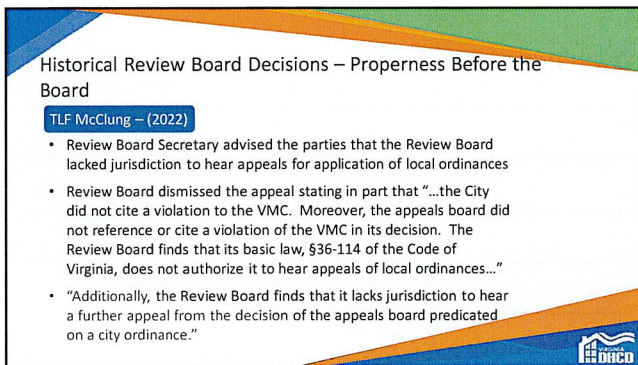
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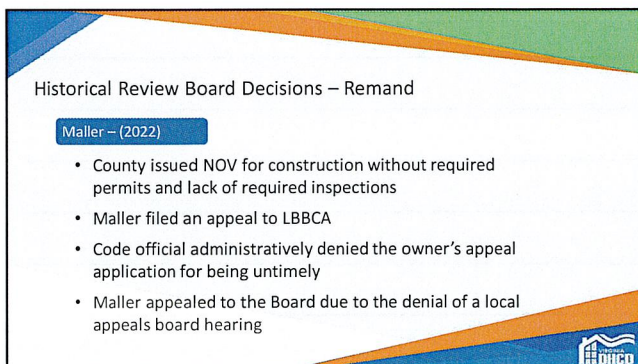
Historical Review Board Decisions – Remand

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 - County issued NOV for construction without required permits and lack of required inspections
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 - Code official administratively denied the owner’s appeal application for being untimely
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Maller – (2022)

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



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Historical Review Board Decisions – Remand

Maller – (2022)

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.”



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Historical Review Board Decisions

Caron (2023)

- Length of hearing
- Property owners are the Gearhearts
- Modification of code official’s decision was ...



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Historical Review Board Decisions

Caron (2023)

“Corrective Action: Contractor to assess the cause of the water leakage and make corrective repairs as deemed necessary to prevent this issue except as such not directly correlated to the contractor’s work/responsibilities. If it is determined that the issue of the water leakage was caused by a separate party other than the contractor, the contractor shall have the option of billing the homeowner for work completed to make this assessment. The duty then falls on the property owners to remedy the leakage. If the soil and/or water table are extreme, provide remediation as required.”



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Historical Review Board Decisions – Right to an Appeal

Gerheart (2023)

- Owner’s role in local appeals board hearing
- Owner’s role in the Review Board hearing
- Review Board found that ...



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Historical Review Board Decisions – Right to an Appeal

Gearheart (2023)

“The Review Board found that because the local appeals board did not include Gearhart as a party to the appeal at the local hearing, the Gearharts did not have a right to appeal to the Review Board. Additionally, the Board found that the local appeals board erred in providing amendments in the Corrective Action section of the final decision, which included a potential financial obligation (the burden to pay for the work done to assess the cause of the water leak) on the Gearharts without making them a party thus leaving them without a right to appeal the local appeals board decision. The role of the local appeals board in building code appeals is to determine whether a violation exists, not how to correct the violation or determine who is financially responsible for the costs of repairs related to the code violations.”



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Topics covered in this training

- ✓ Understanding the Freedom of Information Act (FOIA)
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- ✓ Recommendations and Best Practices for LBBCA members and secretaries
- ✓ Virginia State Building Code Technical Review Board (Review Board)
- ✓ Beyond the Board
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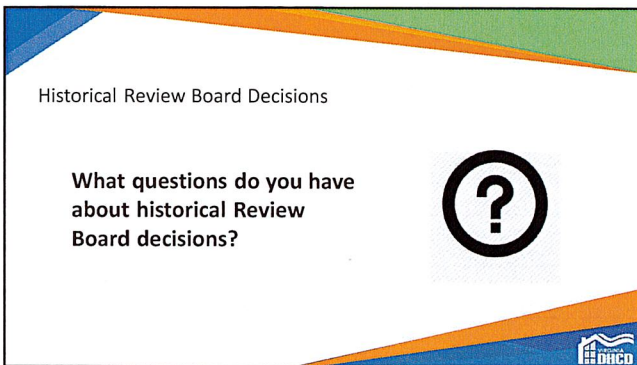
Historical Review Board Decisions

What questions do you have about historical Review Board decisions?



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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*
VMC	14 days from receipt of decision	14 days prior	30 days	21 days

* From receipt of local board decision

Appeals Timeframes Cheat Sheet

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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



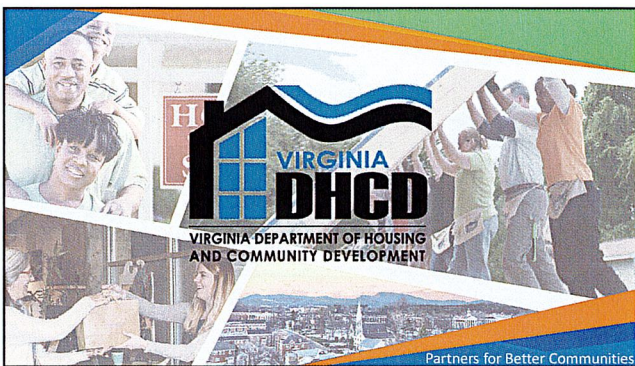
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Thank You

W. Travis Luter, Sr.
 Secretary to the State Building Code Technical Review Board
travis.luter@dhcd.virginia.gov
 (804) 371-7163



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Town of Front Royal Local Building Code Appeals Board

Bylaws

Article 1: Officers

- 1.1 The local board of building code appeals shall organize and annually elect a chairman and a vice-chairman in the month of February.
- 1.2 The Town's Planning and Zoning Department will provide a member from its staff to serve the Board as its recording secretary.
- 1.3 The chairman shall preside at the meeting and hearings, shall decide points of order or procedure, and shall appoint any committees that are found to be necessary.
- 1.4 The vice-chairman shall assume the duties of the chairman in the chairman's absence, disability, or disqualification.
- 1.5 The secretary shall handle correspondence subject to these rules at the direction of the Board; shall send out notices required by these rules; shall keep the minutes of the Board's proceedings; and shall keep a file on each appeal that comes before the Board.

Article 2. Meetings:

- 2.1 Regular meetings of the Board for hearings of appeals shall be held on the first Thursday of each month at 6:00 p.m., except as may be canceled by a majority of the Board if no appeals are pending, in which instance no meeting shall be held.
- 2.2 Special meetings may be called by the chairman, provided at least five (5) days written notice of such meeting is given each member.
- 2.3 A majority of the full membership of the Board shall constitute a quorum.
- 2.4 Business conducted at meetings of the Board shall follow Robert's Rules of Order in all matters in which they are applicable.
- 2.5 The Board may adjourn a meeting if all applications or appeals cannot be disposed of on the meeting day, and no further notice shall be necessary for a continuation of such meeting.

Article 3. Procedure for Hearing Appeals:

- 3.1 Appeals to the Board shall be filed with the Property Maintenance Official on a form provided by the Town's Planning and Zoning Department.
- 3.2 The Property Maintenance Official shall transmit the appeal to the secretary of the Board along with all papers constituting the record of action upon which the appeal is based.
- 3.3 The applicant shall provide the secretary with all information requested on the form provided by the Board, and with any such additional information and data as may be required by the Board to advise the Board fully with the reference to the application for appeal.
- 3.4 Applications for appeal must be on the proper form.
- 3.5 Failure by the applicant to furnish all required information to the Board may be grounds for the Board to dismiss the appeal.
- 3.6 An application for appeal filed accordingly to the above shall be assigned an appeal number within five (5) days.
- 3.7 Applications for appeal will be heard in the order in which they are received.
- 3.8 The secretary of the Board shall schedule the appeal, notify all interested parties of the hearing and give notice including the time, date and place of the meeting to anyone requesting such info action.
- 3.9 The applicant may appear in his own behalf at the hearing or may be represented by counsel or an agent.
- 3.10 Both the applicant and the Property Maintenance Official may speak and present evidence to the appeal and any person whose interests are affected may speak and present evidence for or against the issue. Speakers will be limited to a thirty (30) minute time frame.
- 3.11 The applicant shall be given opportunity for a final rebuttal, not to exceed fifteen (15) minutes.
- 3.12 The final decision on any appeal to the Board shall be in the form of a resolution approved by a majority of the Board members present and voting.
- 3.13 The Board shall notify the interested parties and the code official of the decision within seven (7) days after signing of the resolution by the

chairman, and in any event, within fourteen (14) days after the meeting in which the application for appeal was filed.

Article 4. Records:

- 4.1 A complete file on each appeal shall be kept by the secretary as part of the records of the local Board.
- 4.2 All records of the Board shall be public records.