

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Choice Housing Management (Eric DeSoto)
Appeal No. 25-10

DECISION OF THE REVIEW BOARD

I. Procedural Background

The State Building Code Technical Review Board (Review Board) is a Governor-appointed board established to rule on disputes arising from application of regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

II. Case History

On January 13, 2025, the Fairfax County Department of Land Development Services (County), the agency responsible for the enforcement of Part 1 of the 2018 Virginia Uniform Statewide Building Code (VUSBC), issued a Notice of Violation (NOV) to Eric DeSoto (DeSoto) for the removal and installation of a new HVAC duct work at the property located at 7405 Gatewood Ct. in Fairfax County citing the following three potential violations:

- a. *"No permits for the duct work installed at the property." VRC Section 108.1 When applications are required*
- b. *"No inspections for the duct work installed at the property." VRC Section 113.3 Minimum Inspections*
- c. *"Furnaces and air-handling systems that supply air to living spaces shall not supply air to or return air from a garage." VRC Section M1601.6 Independent garage HVAC systems*

2. DeSoto filed an appeal to the Fairfax County Building Code Board of Appeals (local appeals board). The local appeals board *"denied"* the appeal finding that:

- a. *“The subject construction is within the scope of the code as it involved the removal of the existing duct system and its replacement with a new duct system as to materials, design and location.*
- b. *The subject construction (supply and return air ducts associated with an HVAC system) is required to be permitted, inspected and approved and was not permitted and inspected in order to determine its compliance with the code.*
- c. *The subject construction does not comply with the code as it provides supply air to a garage.”*

On May 20, 2025, DeSoto appealed to the Review Board asking the Review Board to reverse the County and local appeals board decisions.

Appearing at the Review Board meeting for Choice Housing Management was Eric DeSoto. Appearing at the Review Board meeting for Fairfax County were Jonathan Weaver, Donald Weyant, Melissa Smarr, and legal counsel Patrick Foltz. Appearing for the property owners was Ezra Marcus (Marcus).

III. Findings of the Review Board

A. Whether to overturn the decision of the County and the local appeals board that a violation of VUSBC Section 108.1 *When applications are required* exists.

B. Whether to overturn the decision of the County and the local appeals board that a violation of VUSBC Section 113.3 *Minimum Inspections* exists.

DeSoto argued that he acquired the necessary mechanical permit for repair/replacement of the duct system. DeSoto argued that no existing level of safety was decreased in the repair/replacement of the duct system. DeSoto further argued that, in fact, the repair/replacement of the duct system had increased the level of safety because the existing duct system had failed in multiple ways. DeSoto argued that the heat and cool values in the Cardinal Plumbing and Heating report on page 98 of the record of the appeal was incorrect and possibly adversely affected their assessment of the HVAC system.

The County, through legal counsel, argued that the scope of work for the project went well beyond the repair/replace scope of work indicated to the County by DeSoto. The County argued that DeSoto had made many changes and expansions to the duct system and that the HVAC furnace had been relocated across the utility room. The County also argued that new bathrooms were created during the renovation project, thus changing the overall design of the duct system. The County lastly argued that based on the facts of the case, the new duct system was not a like-for-like replacement in the same location rather was a new duct system which required plan review, permitting, and inspections.

Marcus argued that they began having issues with the HVAC system soon after purchasing the home. Marcus also argued that multiple changes were made to the duct system and the furnace was moved across the utility room by DeSoto. Marcus further argued that the new duct system was not a like-for-like replacement in the same location; many supply and return vents had been moved/relocated. Marcus also argued that they had to replace a two-year-old furnace, which failed, due to the furnace being oversized for the structure as well as multiple issues with the duct system.

Note: DeSoto and Marcus confirmed that new bathrooms were created during the renovation project.

The Review Board found that permits and minimum inspections were required because of the changes and expansion of the duct system and installation of new rooms within the structure which would have also required the submittal of a Manual J and D.

C. Whether to overturn the decision of the County and the local appeals board that a violation of VRC Section M1601.6 *Independent garage HVAC systems* exists.

DeSoto argued that the duct system installed in the garage was the exact configuration as the existing duct system that was removed from the garage. DeSoto argued that no existing level of safety was decreased in the repair/replacement of the duct system in the garage.

Marcus argued that the cited violation related to the duct system in the garage had been abated.

The County, through legal counsel, confirmed that the cited violation related to the duct system in the garage had been abated.

The Review Board found the matter related to the duct system in the garage was moot because the cited violation had been abated.

IV. Conclusion

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

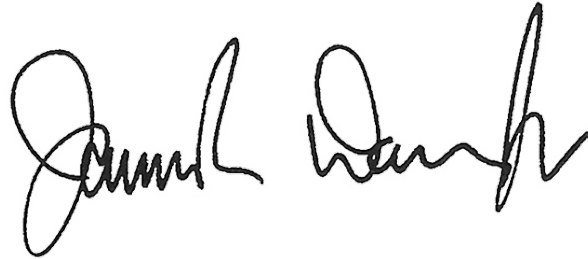
A. Whether to overturn the decision of the County and the local appeals board that a violation of VUSBC Section 108.1 *When applications are required* exists.

B. Whether to overturn the decision of the County and the local appeals board that a violation of VUSBC 113.3 *Minimum Inspections* exists.

The decisions of the County and local appeals board that the violations of VUSBC Sections 108.1 *When applications are required* and 113.3 *Minimum Inspections* exist, are upheld, because of the changes and expansion of the duct system and installation of new rooms within the structure which would have also required the submittal of a Manual J and D.

C. Whether to overturn the decision of the County and the local appeals board that a violation of VRC Section M1601.6 *Independent garage HVAC systems* exists.

The decision of the County and local appeals board that a violation of VUSBC Section M1601.6 *Independent garage HVAC systems* exists, is moot because the cited violation had been abated.



Chair, State Building Code Technical Review Board

Date entered ____ February 19, 2026 _____

As required by VCC 119.9: “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.”

As required by Rule 2A:2(C): “Any party appealing from a regulation or case decision shall file with the agency secretary, within 30 days after adoption of the regulation or after service of the final order in the case decision, a notice of appeal signed by the appealing party or that party's counsel. With respect to appeal from a regulation, the date of adoption or readoption shall be the date of publication in the Register of Regulations. In the event that a case decision is required by § 2.2-4023 or by any other provision of law to be served by mail upon a party, 3 days shall be added to the 30-day period for that party. Service under this Rule shall be sufficient if sent

by registered or certified mail to the party's last address known to the agency.” See Rule 2A:2(A) of the Rules of the Supreme Court of Virginia.