

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Lisa and Robert Gearhart  
Appeal No. 23-11

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 September 5, 2023, the Franklin County Development Services Department of Building Inspections (County), the agency responsible for the enforcement of Part 1 of the 2018 Virginia Uniform Statewide Building Code (VUSBC), issued several Notices of Violation (NOV) to Craig Caron dba/ Craig Caron Builders (Caron) for a residential structure located at 197 Compass Cove in Franklin County, which is owned by Lisa and Robert Gearhart (Gearhart).

The certificate of occupancy (CO) was issued on November 10, 2022. One of the NOV's issued on September 5, 2023 cited the following potential violation:

- a. Violation: *Foundation leaking in two locations.*
  - i. Applicable Code Section: *2018 Virginia Residential Code Section R406.1 Concrete and masonry foundation damp proofing and Section R406.2 Concrete and masonry foundation waterproofing.*
    1. Corrective Action: *The two locations shall be made watertight. If the soil and/or water table are extreme, foundation water proofing is required.*

Caron filed an appeal to the Franklin County Local Board of Building Code Appeals (local appeals board). The local appeals board upheld the decision of the County that the cited violation existed; however, it added a Corrective Action section to its final decision which read as follows:

*“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 deemed that the cause 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.”*

Gearhart, who was neither noticed as a party to the local appeals board hearing nor provided a copy of the decision of the local appeals board, in accordance with VUSBC Section 119.7, further appealed to the Review Board on December 6, 2023, the corrective action of the local appeals board that may have imposed a financial burden on Gearhart. Gearhart did not appeal the decision of the County and local appeals board that violations of the 2018 Virginia Residential Code Section *R406.1 Concrete and masonry foundation damp proofing* and Section *R406.2 Concrete and masonry foundation waterproofing* existed.

Appearing at the Review Board meeting for the County was the Building Official, John Broughton. Appearing for Gearhart were property owners Lisa and Robert Gearhart.

### III. Findings of the Review Board

#### A. Whether Gearhart has a right to appeal.

Gearhart spoke to whether they had a right to file an appeal to the Review Board. Gearhart also explained how the local appeals board hearing was noticed and conducted. Gearhart further explained that while the local appeals board permitted Gearhart to speak, it was as a member of the public as the local appeals board evidently allocates time for the public to comment as items are addressed on the agenda. Furthermore, Gearhart explained that the hearing lasted nine hours.

The County offered that the appeal to the local appeals board was filed by Caron and why Gearhart was not considered a party to the appeal. The County also spoke to how the local appeals board hearing was noticed and conducted. The County concurred with Gearhart that the hearing lasted nine hours. The County explained that the local appeals board did not have any active members and an entirely new board had to be appointed before this appeal could be heard.

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.

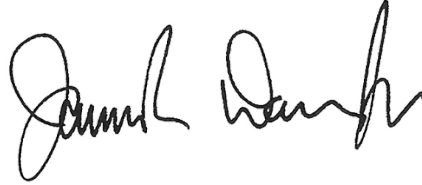
#### IV. Final Order

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

A. Whether Gearhart has a right to appeal.

Gearhart does not have a right to appeal the local appeals board decision because the local appeals board did not include Gearhart as a party to the appeal at the local hearing. While the Review Board is not empowered to take further action to overturn the local action, the Review Board does acknowledge that the local appeals board's action is not an appropriate resolution of a building code appeal. Further, the Review Board notes that the local appeals board erred in providing amendments in the Corrective Action section of the final decision, which appears to

include a potential financial obligation on the Gearharts without making them a party thus leaving them without a right to appeal the local appeals board decision. A possible solution would have been to permit the Gearharts to be a party to the case or to refrain from possibly imposing a financial burden on a non-party.



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Chair, State Building Code Technical Review Board

Date entered \_\_\_\_\_ May 17, 2024 \_\_\_\_\_

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.