

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Harvey Dupree (A...H Variety)
Appeal No. 17-10

DECISION OF THE REVIEW BOARD

Procedural Background

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

Case History

The State Fire Marshal's Office (SFMO) is responsible for the enforcement of the Statewide Fire Prevention Code in those localities which do not enforce the code through a local enforcing agency. Appeals concerning the application of the SFPC by the SFMO are filed directly with the Review Board.

In August of 2017, the SFMO conducted an inspection at a flea market-type assembly of structures at 456-554 Piney Pond Road in Brunswick County, known as A...H Variety, owned by Harvey and Ann Dupree.

The inspection resulted in the issuance of seven inspection notices and twelve cited violations of the SFPC.

Harvey Dupree filed an appeal to the Review Board within the required timeframe under the SFPC.

Review Board staff conducted an informal fact-finding conference in September of 2017, which was attended by representatives of the SFPC, but was not attended by the Duprees.

Review Board staff then developed a staff summary of the appeal, distributed it to all the parties and scheduled an appeal hearing before the Review Board.

The Duprees did not attend the hearing before the Review Board.

Findings of the Review Board

Based on the written application for appeal by the Duprees, since they were not at the Review Board hearing, the Review Board members find three issues under appeal; whether the cited violations should be overturned and found invalid due to lack of proper notification of Ms. Dupree, and whether two cited violations addressing the use of the rear door and loading dock are valid. The remaining citations are not under appeal.

With respect to all the citations being invalid since Ms. Dupree was not notified, the SFPC addresses the service of citations in Section 111.2, as follows:

111.2 Service. The written notice of violation of this code shall be served upon the owner, a duly authorized agent or upon the occupant or other person responsible for the conditions under violation. Such notice shall be served either by delivering a copy of same to such persons by mail to the last known post office address, by delivering in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or, in the case such person is not found upon the premises, by affixing a copy thereof in a conspicuous place at the entrance door or avenue of access. Such procedure shall be deemed the equivalent of personal notice.

The inspection notices issued by the SFMO plainly say they were issued to Harvey M. Dupree. Mr. Dupree is at the very least an “other person responsible for the conditions under violation[,]” and he was given a copy of the inspection notices. The Review Board members therefore find service of the inspection notices to be in accordance with the requirements of the SFPC.

With respect to the cited violations addressing the use of the rear door and loading dock, the Review Board members find there was ample pictorial evidence and testimony from the SFMO representatives to establish that the rear door serves as an exit door and it must be maintained in working condition and the area of exit discharge from the door to a public way must be maintained in a safe condition.

Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board members order the inspection notices issued by the SFMO to be, and hereby are, valid procedurally and the citations for the rear door and loading dock to be, and hereby are, upheld.



Vice-Chairman, State Building Code Technical Review Board

Date entered: 20 APRIL, 2018

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 Vernon Hodge, Acting 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.