

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Mary Ann Capp
Appeal Nos. 14-1 and 14-10

Hearing Date: March 20, 2015

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. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Mary Ann Capp (Capp), the owner of property in Montgomery County, appeals decisions of William Yeager (Yeager), the County building official, under Part I of the Virginia Uniform Statewide Building Code, known as the Virginia Construction Code, or VCC.

A private road on Capp's property crosses a creek and serves as an access to several properties, one of which is owned by Norman and Susan Gray (Grays), at 3000 Sugar Grove Road, in Christiansburg.

There was a private road agreement between Capp and the Grays permitting the Grays to use that road to access their property. In early 2013, a flood washed out the culverts used to cross the creek. Subsequent to the flood, Capp rescinded the private road agreement. Court action between the Grays and Capp ensued and injunctive relief was granted to the Grays to restore access across the creek while the right to use the road was litigated.

In May of 2013, Susan Gray filed a building permit application to Yeager under the VCC to install new culverts across the creek. A building permit was issued. Capp filed an appeal of the issuance of the permit. Before an appeal hearing to the Montgomery County Local Board of Building Code Appeals (local board) could be scheduled, Susan Gray withdrew the permit application and Norman Gray filed a permit application, listing himself as the contractor, for a bridge to be constructed across the creek. A building permit was issued by Yeager using the same building permit number that had been assigned to Susan Gray's permit. Capp then appealed the issuance of Norman Gray's permit to the local board, which conducted a hearing in November

of 2013 and ruled to uphold Yeager's decision. Capp further appealed the local board's decision to the Review Board and Review Board staff designated the appeal to the Review Board as Appeal No. 14-1.

Prior to a hearing before the Review Board on Appeal No. 14-1, in January of 2014, based on a letter from an engineer issued in November of 2013, Yeager approved the bridge as complying with the VCC. Capp appealed Yeager's approval of the bridge to the local board.

A hearing was conducted in June of 2014 and the local board ruled to uphold Yeager's decision. Capp further appealed the local board's decision to the Review Board and Review Board staff designated the appeal to the Review Board as Appeal No. 14-10.

Review Board staff combined Capp's appeals and a hearing before the Review Board was conducted with Capp and Norman Gray and their respective legal counsel, and Yeager, in attendance.

III. FINDINGS OF THE REVIEW BOARD

The issue before the Review Board in Appeal No. 14-1 is whether Yeager erred in issuing the permit for the bridge without adequate plans and specifications or in violation of Capp's due process or equal protection rights.

Private bridges, under the VCC, are classified as Group U (Utility) under § 312 of the VCC and § 312.1 states in pertinent part as follows:

"Buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy shall be constructed, equipped and maintained to conform to the requirements of this code commensurate with the fire and life hazard incidental to their occupancy."

Section 109.1 of the VCC requires construction documents to be submitted with the application for a permit. However, the term "construction documents" is defined in Chapter 2 of the VCC as:

"Written, graphic and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of a project necessary for obtaining a building permit."

In addition, § 109.6 of the VCC addresses the acceptance of construction documents after a permit has been issued as follows:

"109.6 Phased approval. The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of the building or structure shall proceed at the holder's risk with the building operation and without assurance that a permit for the entire structure will be granted."

The Review Board finds that the above provisions authorized Yeager to issue the permit for the bridge with the contingency stipulated in the May 30, 2013 correspondence from Yeager's office to Gray to require a professional engineer to perform a post-construction evaluation of the bridge for compliance with the VCC prior to final approval. Therefore, Yeager's decision to issue the permit for the bridge was authorized by the VCC.

The issue before the Review Board in Appeal No. 14-10 is whether Yeager erred in approving the bridge as complying with the VCC based on the professional engineer's post-construction evaluation.

The Review Board finds that Yeager should not have approved the bridge since design loads for the bridge were not adequately established. Section 312.1 of the VCC, as stated above, requires Group U structures to comply with the provisions of the code commensurate with the fire and life hazard. Chapter 16 of the VCC establishes structural requirements for buildings or structures. Section 1604.2 states in pertinent part:

"Loads and forces for occupancies or uses not covered in this chapter shall be subject to the approval of the building official."

Private bridge loads are not established in Chapter 16 of the VCC. Therefore, the VCC required Yeager to determine what loads the bridge would be subject to. Fire department apparatus access and anticipated truck, vehicle or farm equipment traffic

are examples of considerations. Adequate safety factors in the construction of the bridge for such loads would also need to be considered.

The Review Board further finds that the calculations and assessment provided by the professional engineer engaged by the Grays, and relied upon by Yeager in approving the bridge, did not address the actual construction materials used or provide any test results of the materials. Norman Gray testified at the hearing before the Review Board that the metal beams below the bridge deck were obtained from a salvage yard, and the evidence indicated that no concrete strength tests were performed during or after construction. In addition, the professional engineer's statement that "I feel that the construction materials and workmanship is more than adequate for the required usage[]" confirms that no tests or evaluations of the actual construction materials were performed.

Accordingly, Yeager's approval of the bridge was not justified and is contrary to the requirements of the VCC.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board (i) orders the decision of Yeager to issue the VCC permit for the bridge; and the local board's ruling to uphold that decision, to be, and hereby are,

Upheld and (ii) orders the decision of Yeager to approve the bridge; and the local board's upholding of that decision, to be and hereby are, overturned.

/s/*
Chairman, State Technical Review Board

June 19, 2015
Date Entered

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 W. Hodge, Secretary to the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.

***Note: The original signed final order is available from Review Board staff.**