

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD  
(For Preliminary Hearing as to Jurisdiction)

IN RE:           Appeal of TLF McClung LLC  
                  Appeal No. 22-06

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 October 25, 2021, the City of Salem Department of Community Development (City), the agency responsible for the enforcement of Part III of the 2018 Virginia Uniform Statewide Building Code (Virginia Maintenance Code or VMC), issued a letter for the structure located at 17 E. 7<sup>th</sup> Street, in the City of Salem, owned by TLF McClung LLC (McClung). The letter cited a violation of Section 18-38 of the City of Salem Code for dilapidated buildings deeming the structure unsafe and dangerous to the safety of other inhabitants of the city. The letter ordered that documentation outlining how the structure would be brought into compliance be submitted to the City within 15 days of the date of the letter or the City would bring the matter before the City of Salem Board of Building Appeals (appeals board). The letter cited the following needed to be repaired:

- a. The entry way needs to be demolished or repaired.

- b. The sidewall needs to be repaired
- c. The siding needs to be replaced

On February 17, 2022, the City issued another letter to McClung for the structure. In the letter the City again cited a violation of Section 18-38 of the City of Salem Code for dilapidated buildings and again deemed the structure unsafe and dangerous to the safety of other inhabitants of the city. The letter ordered that documentation outlining how the structure would be brought into compliance be submitted to the City within 15 days of the date of the letter or the City would bring the matter before the appeals board. The letter cited the following needed to be repaired:

- 1) The entry way needs to be demolished or repaired.
- 2) The sidewall needs to be repaired
- 3) The siding needs to be replaced
- 4) All unsafe structural issues need to be made code compliant

The City scheduled a hearing with the appeals board for March 31, 2022<sup>1</sup> concerning McClung's structure for a violation of Section 18-38 of the City of Salem Code.

In a letter from the City dated April 4, 2022, the City notified McClung that the appeals board ruled that McClung had to obtain a demolition permit within 30 days of the date of the meeting and complete demolition of the structure within 120 days of the meeting date. The appeals board also gave the City authority to proceed with demolition of the structure if McClung failed to obtain the required permit and/or complete demolition in the required timeframe. In the last paragraph of the letter the City advised that *“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”*. The letter included the address and phone number for the Office of the Review Board.

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<sup>1</sup> McClung never filed an appeal to the appeals board on this matter

After receiving the decision of the appeals board McClung, through legal counsel, further appealed to the Review Board.

While processing McClung's appeal, Review Board staff advised the parties and their legal counsel that in prior cases concerning jurisdiction, the Review Board ruled it lacked jurisdiction to hear appeals for the application of local ordinances and/or regulations while referencing the Perry Smith Appeal No. 16-3<sup>2</sup>.

### III. Findings of the Review Board

#### A. Whether the appeal is properly before the Board.

The City, through legal counsel Christopher Dadak, argued that the letter outlining the alleged violation was solely based on the City of Salem ordinance. The City reminded the Board of the Perry Smith Appeal No. 16-3 from six years ago, where the Board decided that it lacked jurisdiction when violations of a city ordinance were cited. The City asked that the Board come to the same conclusion for this matter as it did six years ago and dismiss the case for lack of jurisdiction.

TLF McClung LLC owner, Lew McClung, and his legal counsel, Scott Gardner, were properly noticed of the hearing. Neither Mr. McClung nor Mr. Gardner attended the hearing; furthermore, Mr. Gardner in an email dated August 17, 2022, advised Review Board staff that he would not be traveling to Richmond for oral arguments.

The Review Board finds that the City did not cite a violation to the VMC. Moreover, the appeals board did not reference or cite a violation of the VMC in its decision. The Review Board finds that its basic law, §36-114 of the Code of Virginia, does not authorize it to hear appeals of local ordinances:

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<sup>2</sup> Perry Smith Appeal No. 16-3 is from the City of Salem for cited violation of Section 18-38 of the City of Salem Code

*“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.”*

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.

#### 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 the appeal is properly before the Board.

The appeal is dismissed due to the lack of jurisdiction because the letter from the City cited violations of the City of Salem ordinance not the VMC.



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Vice-Chair, State Building Code Technical Review Board

Date entered \_\_\_\_\_ September 16, 2022 \_\_\_\_\_

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.