

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Clark Construction Group and JCM Associates
Appeal No. 22-01

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 March 29, 2021, the Fairfax County Department of Land Development Services (County), the agency responsible for the enforcement of Part 1 of the 2012 Virginia Uniform Statewide Building Code (Virginia Construction Code or VCC), received information regarding natural gas shutoff valves and regulators that were installed in kitchen cabinets concealed by the natural gas cooktop and electric wall oven in 140 units on floors nine through 25 of the property, constructed by Clark Construction Group (Clark) and located at 1650 Silver Hill Drive McLean, in Fairfax County.

Upon inspection of the property, two violations of the 2012 VCC and six violations of the 2012 Virginia Fuel Gas Code (VFGC) were cited in the Corrective Work Order (CWO) dated October 29, 2021. The cited violations were:

- a) VCC Section 108.1 When applications [for permits] are required. Gas permits will be required for each residential unit.

- b) VCC Section 113.3 Minimum inspections. Each residential unit will need a gas test and final inspection.
- c) VFGC Section 409.1.2 Prohibited locations. Shutoff valves shall be prohibited in concealed locations and furnace plenums.
- d) VFGC Section 409.1.3 Access to shutoff valves. Shutoff valves shall be located in places so as to provide access for operation and shall be installed so as to be protected from damage.
- e) VFGC Section 409.3.1 Multiple tenant buildings. In multiple tenant building, where a common piping system is installed to supply other than one-and two-family dwellings, shutoff valves shall be provided for each tenant. Each tenant shall have access to the shutoff valve serving that tenant's space.
- f) VFGC Section 409.5.1 Located within the same room. The [appliance] shutoff valve shall be located in the same room as the appliance. The shutoff valve shall be within six feet of the appliance, and shall be installed upstream of the union, connector, or quick disconnect device it serves. Such shutoff valves shall be provided with access.
- g) VFGC Section 410.1 Pressure regulators. Access shall be provided to pressure regulators.
- h) VFGC Section 623.1 Cooking appliances. Cooking appliances...shall be installed in accordance with the manufacturer's installation instructions.

On October 28, 2021, Clark filed an appeal to the Fairfax County Board of Building Code Appeals (local appeals board). On December 8, 2021, the local appeals board upheld the decision of the County on all eight cited violations.

On January 6, 2022, Clark further appealed to the Review Board. A Review Board hearing was held May 20, 2022. Appearing at the Review Board hearing for Clark Construction and JCM Associates were Ray Grill, Charles Chisley, Mike McReady, Russell James, Larry Mundy, and Lee DeLong. Appearing at the hearing for Fairfax County were Richard Grace, Melissa Smarr, Scott Hagerty, Dennis Hart, Charles Horton, Anthony McMahan, John Walser, and Paul Emerick, legal counsel.

III. Findings of the Review Board

- A. Whether to uphold the decision of the County and local appeals board that a violation of VCC Section 108.1 When applications [for permits] are required exists.

Clark, through their agent Ray Grill, argued that the cited violation did not apply because no work had occurred which required permits; therefore, no permits were currently required.

The County, through legal counsel, offered that this citation served as notice that permits would be required to perform the work needed to bring the structure into compliance. The County concurred no violation of this code section exists as no permits were required at this time.

The Review Board finds that a violation of VCC Section 108.1 When applications [for permits] are required does not exist.

B. Whether to uphold the decision of the County and local appeals board that a violation of VCC Section 113.3 Minimum inspections exists.

Clark, through their agent Ray Grill, argued that this cited violation did not apply because no work had occurred which required inspections; therefore, no inspections were currently required.

The County, through legal counsel, offered that this citation served as notice that inspections would be required for the work needed to bring the structure into compliance. The County concurred no violation of this code section exists as no inspections were required at this time.

The Review Board finds that a violation of VCC Section 113.3 Minimum inspections does not exist.

C. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 409.1.2 Prohibited locations exists.

D. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 409.1.3 Access to shutoff valves exists.

E. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 409.3.1 Multiple tenant buildings exists.

Clark, through their agent Ray Grill, argued that only one gas appliance was present in each tenant space and that the lone gas shutoff valve could serve as both the appliance and tenant gas shutoff valves. Clark argued that the code only required access to gas shutoff valves not ready access. Clark further argued that the code allowed the gas shutoff valve to be accessed through a panel or door. Clark also argued that access to the gas shutoff valve was provided, in accordance with the code, as removal of the oven was a similar obstruction to a door or panel. Clark argued that an individual may have to remove several screws to remove a panel to provide access and that removal of the oven only required the removal of two small screws and sliding the oven out of the cabinet and onto the floor.

The County, through legal counsel, concurred that a single gas shutoff valve in each tenant space could be utilized as both the gas appliance shutoff valve and the tenant gas shutoff valve if installed in compliance with both the appliance and tenant gas shutoff valve code provisions; however, that was not the case in the Verse Condominiums. The County argued that the only gas shutoff valve in each unit was under the cooktop and behind the oven which was a concealed location which required the removal of either the oven or the cooktop to access the gas shutoff valve. The County further argued that pursuant to the code definition for access, a 149lbs oven was not a similar obstruction to a door or panel; therefore, access to the gas shutoff valve was not provided. The County further argued that pursuant to the code definition for concealed location, the removal of an oven was not equivalent to a readily removable door or panel. The County also argued that the location of the shutoff valve made servicing the gas shutoff valve nearly impossible.

The Review Board finds that a violations of VFGC Section 409.1.2 Prohibited locations, VFGC Section 409.1.3 Access to shutoff valves, and VFGC Section 409.3.1 Multiple tenant buildings exist.

F. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 409.5.1 Located within the same room exists.

Clark, through their agent Ray Grill, argued that the gas shutoff valve was located in the same room and within six feet of the appliance.

The County, through legal counsel, offered that this citation served as notice that the required tenant gas shutoff valve would be required to meet this code section to bring the structure into compliance. The County concurred no violation of this code section exists at this time.

The Review Board finds that a violation of VFGC Section 409.5.1 Located within the same room does not exist.

G. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 410.1 Pressure regulators exists.

Clark, through their agent Ray Grill, argued that the pressure regulators were installed pursuant to the manufacturer's installation instructions. Clark also argued that if the Board found that access to the gas shutoff valves existed, then the Board should also find that access to the pressure regulators existed.

The County, through legal counsel, argued that the line pressure regulators were not installed pursuant to the manufacturer's installation instructions when using a vent limiting device. The County further argued that the line pressure regulators were required to be installed in a horizontal upright position. The County argued that the line pressure regulators were mounted in a 45 degree position.

The Review Board finds that a violation of VFGC Section 410.1 Pressure regulators exists.

H. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 623.1 Cooking appliances exists.

Clark, through their agent Ray Grill, acknowledged that the cooktops had not been installed pursuant to the manufacturer's installation instructions and proper installations would be performed.

The County, through legal counsel, argued that the cooktops were not installed pursuant to the manufacturer's installation instructions.

The Review Board finds that a violation of VFGC Section 623.1 Cooking appliances exists.

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 to uphold the decision of the County and local appeals board that a violation of VCC Section 108.1 When applications [for permits] are required exists.

The decision of the County and local appeals board that a violation of VCC Section 108.1 When applications [for permits] are required exists is overturned.

B. Whether to uphold the decision of the County and local appeals board that a violation of VCC Section 113.3 Minimum inspections exists.

The decision of the County and local appeals board that a violation of VCC Section 113.3 Minimum inspections exists is overturned.

C. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 409.1.2 Prohibited locations exists.

The decision of the County and local appeals board that a violation of VFGC Section 409.1.2 Prohibited location exists is upheld.

- D. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 409.1.3 Access to shutoff valves exists.

The decision of the County and local appeals board that a violation of VFGC Section 409.1.3 Access to shutoff valves exists is upheld.

- E. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 409.3.1 Multiple tenant buildings exists.

The decision of the County and local appeals board that a violation of VFGC Section 409.3.1 Multiple tenant buildings exists is upheld.

- F. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 409.5.1 Located within the same room exists.

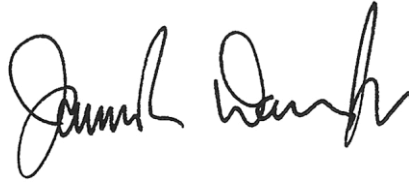
The decision of the County and local appeals board that a violation of VFGC Section 409.5.1 Located within the same room exists is overturned.

- G. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 410.1 Pressure regulators exists.

The decision of the County and local appeals board that a violation of VFGC Section 410.1 Pressure regulators exists is upheld.

- H. Whether to uphold the decision of the County and local appeals board that a violation of VFGC Section 623.1 Cooking appliances exists.

The decision of the County and local appeals board that a violation of VFGC Section 623.1 Cooking appliance exists is upheld.



Chair, State Building Code Technical Review Board

Date entered _____ July 15, 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.