



County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

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**LOCAL BOARD OF BUILDING CODE APPEALS
ELECTRONIC MEETING VIA MICROSOFT TEAMS
MONDAY, AUGUST 22, 2022 at 3:00 P.M
AGENDA**

1. Call to Order
2. Establish a Quorum
3. Election of Officers
4. [Review of Local Board of Building Code Appeals Manual and Bylaws](#)
5. [Appeal Hearing:](#)
 - A. [Clifford and Khristina Hammill - #B2002-00338-SF](#)
[Appeal of Building Official Decision – April 27, 2022](#)
6. [Approval of Minutes](#)
 - A. [October 21, 2020](#)
7. Adjournment

* This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(16), An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster. Opportunities for the public to access and participate in the electronic meeting will be posted at <https://www.albemarle.org/community/county-calendar>. Participation will include the opportunity to comment on those matters for which comments from the public will be received.

**LOCAL BUILDING
OR
FIRE PREVENTION CODE
BOARDS OF APPEALS
MANUAL**

JULY 2022

VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF BUILDING AND FIRE REGULATION



FOREWORD

In Virginia's system of building and fire prevention codes, the local building or fire prevention code appeals board is a quasi-judicial board providing a first tier due process right of adjudication of decisions of local government building or fire officials under the enforcement of either the Virginia Uniform Statewide Building Code (USBC) or the Virginia Statewide Fire Prevention Code (SFPC).

This manual provides guidance to the local building or fire prevention code appeals board members and to the local governments and to the building and fire prevention departments they serve to assure the proper constitution and operation of the local appeals boards.

Many issues and subjects in this manual are somewhat legal in nature. It is always recommended that the local government, the local building and fire prevention department personnel, and the local appeals board members have access to the legal counsel of the locality for consultation and assistance.

Staff of the Division of Building and Fire Regulation, within the Virginia Department of Housing and Community Development (DHCD), are also available to assist with the organization and functions of the local appeals boards. For training opportunities, or to have DHCD staff meet with the members of a local appeals board or with the local building or fire prevention departments, please call (804) 371-7150 or contact Office of the Review Board staff at sbco@dhcd.virginia.gov.

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CHAPTER 1: LEGAL FRAMEWORK

There are a number of laws that influence the establishment and functioning of a local government board of building or fire prevention code appeals. As an appeals board is quasi-judicial in nature, all applicable laws and constitutional guarantees of due process are inherent in the operation of the boards. Some due process considerations are stated specifically in the basic laws and regulations the boards are subject to and others are just general matters of law. In addition, the laws and regulations governing the local appeals boards establish the constitution, powers and duties of the boards. This manual attempts to outline and organize those requirements for easy reference by board members and local government representatives.

As this manual addresses appeals boards established under the both the USBC and SFPC, where there are differences in the laws and regulations affecting one or the other board, such differences will be delineated. Otherwise, this manual applies equally to either board. It should be noted that local appeals boards under the USBC are also charged with hearing appeals under the Virginia Amusement Device Regulations, which for the purposes of this manual, may be treated as appeals under the USBC.

LAWS THAT ESTABLISH THE LOCAL BOARDS OF APPEALS

Appeals boards under both the USBC and SFPC are established by state statute. The specific legislative provisions are set out below.

For appeals boards under the USBC, § 36-105 of the Code of Virginia states:

“There shall be established within each local building department a local Board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom.”

For appeals boards under the SFPC, § 27-98 of the Code of Virginia states:

“Appeals concerning the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board.”

APPOINTMENT AND ARRANGEMENT OF BOARDS

As indicated in the above laws, the local boards of appeals are to be established within the local governments that enforce the USBC and SFPC. The laws do not specify the details of appointment or arrangement of the boards, however, it is generally recognized that the local appeals board members should be appointed by the local governing body, or the local governing body would sanction the use of an already existing board to fulfill the purpose of the local appeals board. For instance, there could be a regional board which the local governing body of several localities

sanctioned for hearing appeals from the local building or fire prevention departments of those localities. In addition, a local governing body could have a single board of appeals to hear appeals concerning the application of both the USBC and the SFPC, or could have a separate board for hearing appeals relative to each code. There could also be multiple boards for varying subject matter under either the USBC or the SFPC, such as a board for hearing appeals of electrical, plumbing or mechanical decisions of a local building department and a separate board for decisions concerning building construction or fire prevention.

Whatever the arrangement decided upon by a local governing body, it is simply recommended that the powers and duties of the boards be clearly delineated in the ordinance or action by the local governing body in establishing the local appeals boards.

In addition, the local governing body should set terms for the board members so there is a clear record of who is appointed to the local appeals board and for how long they will be serving. As the laws governing the local appeals boards permit the USBC and SFPC to also address the composition of the local boards, adherence to any relevant provisions in the appeals sections of both codes should also be given consideration by the local governing bodies in the appointment of the board members (see also Chapter 2 of this manual for an overview of the relevant regulatory provisions).

FEES

The laws establishing the USBC and SFPC appeals boards permit the charging of fees. Both §§ 27-98 and 36-105 of the Code of Virginia state:

“Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.”

LAWS THAT GOVERN THE APPEALS PROCESS

BASIC LAWS

For appeals under the USBC, § 36-105 of the Code of Virginia states:

“Any person aggrieved by the local building department’s application of the Building Code or refusal to grant a modification to the provisions of the Building Code may appeal to the local board of Building Code appeals.”

For appeals under the SFPC, § 27-98 of the Code of Virginia states:

“Appeals from the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board.”

An additional law addressing appeals concerning the application of local fire prevention regulations, in § 27-98 of the Code of Virginia, states:

“Any local fire code may provide for an appeal to a local board of appeals. If no local board exists, the State Building Code Technical Review Board shall hear appeals of any local fire code violation.”

To elaborate on the issue of local fire prevention regulations, § 27-97 of the Code of Virginia establishes the SFPC, which is a state regulation. However, the law also provides that local governments are empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the SFPC provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair or use of a building or structure. Consequently, enforcement of such more restrictive local fire prevention regulations is not enforcement of the SFPC and prior to the enactment of the law referenced above; the local appeals boards established under the SFPC did not have authority to hear appeals of the application of such local regulations. Under the current law, the appeals boards established under the SFPC may hear such appeals if the local ordinance establishing the SFPC appeals board specifically authorizes the board to hear appeals of the application of local fire prevention regulations. The local ordinance may establish a different appeals board for hearing such appeals, or may be silent on appeals of local fire prevention regulations, in which case the appeal of a local fire prevention regulation would not be appealed to the SFPC appeals board, but would rather be appealed directly to the State Building Code Technical Review Board (see below).

APPEALS TO THE STATE TECHNICAL REVIEW BOARD

As the basic laws under the USBC and the SFPC indicate, appeals under those codes are first heard by the local government boards of appeals, and may be further appealed to the State Building Code Technical Review Board (State Review Board). The State Review Board has its own set of basic laws governing appeal proceedings and further appeals from decisions of the local appeals boards. This manual does not address appeals to the State Review Board or proceedings involving the State Review Board; however, it is worth noting that the State Review Board’s basic laws enable it to hear appeals *de novo*, which is essentially a new evidentiary hearing, so any deficiencies or incompleteness in a local appeals board proceeding may be addressed upon a further appeal to the State Review Board. Questions concerning State Review Board proceedings should be addressed to the Office of the Review Board. Contact information is provided in the preface of this manual.

VIRGINIA FREEDOM OF INFORMATION ACT

The Virginia Freedom of Information Act (Chapter 37 of Title 2.2 of the Code of Virginia) are state laws assuring the free entry to meetings of public bodies to afford every opportunity to citizens to witness the operations of government. This would include meetings of the local appeals boards. While the Freedom of Information Act does include exceptions which permit closed meetings under certain circumstances, in general, the hearings conducted by local appeals boards and the deliberations of the boards should be conducted in open, not closed, meetings. Should the chair of a local appeals board, or any of its members, believe a proceeding should be conducted in closed session, it would be advised to discuss the matter with the board’s legal counsel to assure compliance with the Act.

VIRGINIA CONFLICTS OF INTEREST ACT

The Virginia State and Local Government Conflicts of Interests Act (Chapter 31 of Title 2.2 of the Code of Virginia) are state laws addressing inappropriate conflicts in the actions of public officers and employees so that the standards of conduct for such officers and employees are uniform. Members of local boards of appeals should consider recusal from participating in appeal hearings or proceedings in which they may have a conflict of interest with any of the parties involved. In questions of whether a conflict of interest is present, board members should consult with the locality's legal counsel or other appropriate legal counsel familiar with the provisions of the Act.

CHAPTER 2: REGULATORY REQUIREMENTS

As the laws authorizing the USBC and the SFPC and establishing the appeals process permit the codes to address the composition, duties and responsibilities of the local appeals boards, both the USBC and the SFPC have specific provisions affecting the make-up and operations of a local appeals board. This chapter outlines those specific requirements and practices inherent in the functioning of the local appeals boards.

COMPOSITION OF BOARDS

MEMBERSHIP REQUIREMENTS

Local governing bodies should be made aware of the specific appeal provisions in the USBC and SFPC that affect the appointment of board members. Both the USBC and SFPC require a local appeals board to consist of at least five members and permit the appointment of alternate members. The codes do not prohibit the reappointment of regular or alternate members.

To provide for continuity of the board members serving, the appeal provisions also suggest that the terms of the board members be staggered so that less than half of the terms will expire in any given year.

Guidance is also provided in the appeal provisions of the codes for the qualifications of the board members and there is a prohibition against employees or officials of the locality serving as board members.

BYLAWS

While not required by either state law or the appeal provisions of the codes, general parliamentary procedures would encompass the approval and use of bylaws by a local appeals board to ratify certain aspects of the functioning of the board. Appendix A of this manual contains sample bylaws that may be considered by the appeals board in the formulation of bylaws if determined necessary or appropriate.

ELECTION OF CHAIR

Both the USBC and SFPC appeals provisions specify the election of a chair by the board members annually. The codes do not prohibit the re-election of the chair. The appeals provisions also

provide that if the chair is absent at a meeting, the board members would appoint a chair pro tem to serve as chair for that meeting.

While the appeals provisions are silent on the election of a vice-chair, it would not be prohibited and if a vice-chair is elected, then the vice-chair would serve as chair in the chair's absence.

General parliamentary procedure should be used in electing officers within the appeals board, which typically involves a nomination procedure.

The role of the chair in meetings and appeal hearings is discussed in detail in Chapter 4 of this manual.

APPOINTMENT OF SECRETARY

The wording in the appeals provisions of both the USBC and SFPC indicate that the secretary to the local appeals board is a non-member of the board, appointed by the locality. Due to the role of the secretary, which is fully discussed in Chapter 3 of this manual, it is recommended that the secretary be an employee of the local building or fire prevention department with good organizational skills, competent in computer and word processing capabilities, and possess a general knowledge of the functioning of the local building or fire prevention department.

DUTIES OF LOCAL BOARD MEMBERS

MEETINGS

The local boards of appeals members' primary duty is to participate in appeal hearings when appeals are filed to the local boards and to render decisions on such appeals. Detailed discussions of hearing and deliberation procedures are found in Chapter 4 of this manual.

In addition to outlining the members' roles in appeals proceedings, the USBC appeal provisions require local board members to meet as necessary to assure a duly constituted board, appoint officers as necessary and receive such training as may be appropriate or necessary from staff of the locality. The SFPC appeal provisions require local board members to meet at least once annually to assure a duly constituted board, appoint officers as necessary and receive such training as may be appropriate or necessary from staff of the locality.

CHAPTER 3: BEFORE THE HEARING

APPLICATION FORM

While not required by the USBC or the SFPC, an appeal application form (written or electronic) may and should be used to document the filing of an appeal and the steps taken in acknowledging and processing the appeal. A suggested appeal application form for use by the local appeals boards may be found in Appendix B of this manual.

Note that the parties to an appeal typically include the appealing party and the enforcing agency representative (usually the building official or the fire code official). Owners of the property involved are typically considered parties and should be included in all correspondence.

Once an appeal applicant files an application for appeal, including a verbal request for appeal where written application forms are not utilized, the application must be processed and presented to the local appeals board for consideration. No one person, to included but not limited to the code official, department staff, local appeals board secretary, county administrator or city manager, county attorney, or local governing body member, can decide whether an appeal is to be heard by any local appeals board based on a jurisdictional issue such as timeliness, application of the code, properness before the board, right to appeal, aggrievement, etc.; furthermore, no one person can make a determination related to any merit of any case. Only the local appeals board can render a decision for any matter in an appeal.

ROLE OF SECRETARY

The secretary to the local appeals boards functions as the point of contact for all business relating to the board outside of a meeting of the board. Any persons inquiring about appeals should be put in touch with the secretary, who would provide the appeal application form, if one is used, and explain the appeals process to the potential applicant.

The appeal application form, once completed, would be submitted to the secretary and the secretary would collect any fees required. The secretary would also document the date the appeal was received as the codes have timeframes within which an appeal must be filed.

The secretary would then schedule the board meeting, taking into consideration any time constraints required by the codes. Both the USBC and the SFPC require the local appeals board to meet within **30** days of the receipt of the application for appeal and requires **14** days notice of the meeting to the parties, unless the parties agree to a meeting date with less than **14** days notice.

As mentioned under the Basic Laws section of Chapter 1 of this manual, since the functions of local appeals boards are subject to the Virginia Freedom of Information Act, the secretary should consider any meeting notice requirements of that Act in preparing for the meetings.

The parties should be asked by the secretary to furnish any information they wish the board members to consider in advance of the hearing so that copies can be made and be available for the board members at the hearing. While there is no requirement to do so, if the parties can provide the information in a timely fashion, the secretary may furnish the information to the board members prior to the meeting, however, caution should be taken to treat all parties equally, so in cases where the parties cannot agree to provide the appeal information prior to the hearing, all documents, pictures or exhibits should just be held to be distributed at the hearing.

CHAPTER 4: THE HEARING

Once the secretary has scheduled a meeting to hear an appeal, a hearing is conducted at the meeting to address an appeal. Board members, including the chair, should be cautioned against having any

contact with the parties in an appeal outside of the hearing itself, as ex parte communication may be seen as a violation of due process rights. This is why the secretary fulfills the role of being the board's representative outside of meetings, as the secretary is not a board member and does not have voting power or sway over the outcome of a hearing.

ROLE OF CHAIR

PRESIDING OFFICER

The role of the chair of the local appeals boards is to preside over the hearing and to rule on any procedural matters which are presented. The flow of the hearing is controlled by the chair in accordance with the order of events, as outlined below. The chair is given no authority outside of a meeting of the local appeals board in either state law or in the USBC or SFPC. All administrative functions, such as scheduling hearings, contacting the parties, requesting documents to be submitted (outside of a hearing), are handled by the secretary to avoid the appearance of bias by the chair or any board members.

CONTINUANCES

Any party may ask for a continuance at the hearing and the chair may rule on the continuance request, or may defer to a vote of the board itself on the continuance request. The chair or the board members should take into consideration the timeframes established in the USBC or the SFPC for postponements where continuance requests are not agreed to by all parties and, in deciding whether to grant a continuance, consideration should be given to whether the refusal to grant the continuance request will substantially inhibit the ability of a party to properly present its case.

OTHER POWERS AND DUTIES

The chair may rule on the submittal of evidence at the hearing and may consider the objections of any party as to the relevance of the evidence. As is typical with administrative appeals, hearsay or other unsubstantiated evidence is generally permitted with the understanding that the board members may determine the appropriate deference to afford such evidence.

ROLE OF BOARD MEMBERS

The board members' role is to listen to the testimony and review the evidence presented by the parties in an appeal and to ultimately decide on the outcome of the case.

RECUSAL

As previously outlined concerning conflicts of interest, at the outset of an appeal hearing, should any board members determine their recusal is warranted due to a conflict of interest, then that member should inform the chair and state for the record that they will not be participating in the hearing or deliberations in the appeal. It is typical for that board member to then remove themselves physically from the meeting and the secretary would let them know when they may return to the meeting for other business of the board. Should a board member wish to stay in the

meeting, but not participate in the proceedings, then it would be advisable to discuss the issue with legal counsel to assure no components of conflict of interest are present.

QUESTIONS BY BOARD MEMBERS

Board members may ask questions of the parties as the appeal proceedings progress. It is advisable for the chair to control such questioning and for the board members to direct questions through the chair. There may be established procedures for such questioning within the flow of events outlined in the Order of Events in Hearings section of this chapter.

RAISING ISSUES

The chair, or any board member, has the right to raise issues in the course of a hearing, and to determine the issues, which are, or are not, properly before the board in an appeal. Issues which, if decided upon, may have the effect of dismissing an appeal without a hearing upon the substantive issues in an appeal, such as whether a party is a proper party to bring an appeal, whether the timeframes have been met for a proper appeal to exist, or whether the nature of the appeal is improper for other reasons, should be raised at the beginning of an appeal hearing and a decision should be made on any such issues raised prior to hearing the full appeal. Suggested procedures for handling such issues are outlined in the Order of Events in Hearings section of this chapter.

ROLE OF SECRETARY

MINUTES AND EXHIBITS

The secretary should take sufficient notes to enable minutes to be developed of appeal hearings. Recording the proceedings is permissible as a method to later develop minutes. There is no requirement in state law, or in the USBC or the SFPC for the hearings to be recorded, or for a transcript of the hearings to be made. The minutes of the meeting in which the hearing was held, and the written decision of the local appeals board, is sufficient to document the action of the board and to enable a further appeal of a local appeals board decision.

If exhibits are introduced at a hearing, typical procedure would be for the secretary to give a copy of the exhibit to the chair and to the other party or parties. The chair would then ask the other parties if they objected to the submittal of the exhibit. If there is an objection, then the chair would rule on the objection. If there are no objections, then the chair would rule on the admissibility of the exhibit. The chair could exclude the exhibit as not relevant or accept the exhibit into evidence. The secretary should then mark the exhibit for identification purposes and if it was accepted into evidence, pass it into circulation to the other board members.

ORDER OF EVENTS IN HEARINGS

QUORUM

General parliamentary procedure requires a quorum of the members of a board to be present for official action to be taken. However, both the USBC and the SFPC, in the appeal provisions, state that if a quorum is not present, a party may request that the hearing be rescheduled. In addition, the appeal provisions in both codes state that a decision may be made by an appeals board by a

concurring vote of a majority of those board members present. Taken together, those provisions indicate that a local appeals board may hear an appeal with less than a quorum of the board members present. Irrespective of the above, it is generally advisable to make every attempt to have a quorum of the board members present at hearings to avoid any allegations of impropriety.

TESTIMONY AND EVIDENCE

The chair should have an established order of events for the presentation of testimony in an appeal hearing. The order of events used by the State Review Board, which may be used by the local appeals boards, is generally as follows:

- Appellant's Opening Statement/Testimony by the Appellant/ Witnesses for the Appellant:

The Appellant gives direct testimony and presents their case. A summary or opening statement may be offered but is to be followed by the complete testimony, except for any witnesses. Witnesses are called one at a time and may present direct testimony or testimony by direct questioning. If testimony is to be given by direct questioning, then an opening statement may be offered, with direct questioning testimony of the Appellant or witness to follow.

- Time limit twenty (20) minutes for appeals hearings.
- Time limit eight (8) minutes for preliminary hearings.

- Cross-examination of Appellant and Witnesses

The Appellee is permitted to direct cross-examination questions to the Appellant and all witnesses for the Appellant.

- Time limit ten (10) minutes for appeals hearings.
- Time limit five (5) minutes for preliminary hearings.

- Appellee's Opening Statement/Testimony by Appellee/Witnesses for the Appellee

The Appellee gives direct testimony and presents their case. A summary or opening statement may be offered but is to be followed by the complete testimony, except for any witnesses. Witnesses are called one at a time and may present direct testimony or testimony by direct questioning. If testimony is to be given by direct questioning, then an opening statement may be offered, with direct questioning testimony of the Appellee or witness to follow.

- Time limit twenty (20) minutes for appeals hearings.
- Time limit eight (8) minutes for preliminary hearings.

- Cross-examination of Appellee and Witnesses

The Appellant is permitted to direct cross-examination questions to the Appellee and all witnesses for the Appellee.

- Time limit ten (10) minutes for appeals hearings.
- Time limit five (5) minutes for preliminary hearings.

- Questioning by Review Board Members

Review Board members may question any party or witness after testimony is complete.

- Time limit thirty (30) minutes for appeals hearings.
- Time limit thirteen (13) minutes for preliminary hearings.

- Closing Statements and Closing of Hearing

All parties are permitted to present closing statements, after which the presiding officer closes the hearing.

- Time limit five (5) minutes for appeals hearings.
- Time limit two (2) minutes for preliminary hearings.

NOTE: When needed, testimony and cross-examination by any other party to the appeal, such as the owner, etc., will take place prior to #5 Questioning by Review Board Members.

Any additional evidence submitted by the parties at an appeal hearing is subject to consideration and ruling by the chair as to relevance and should be marked into evidence by the secretary. See the Role of the Secretary section in this chapter for additional information and procedures for submitting evidence.

CLOSING THE HEARING AND DELIBERATIONS

Once testimony is completed and the board members have asked any questions, the hearing should be concluded with a statement such as *“The hearing of this matter is now concluded. The board will deliberate the matter and the parties may be present for the deliberations, however, no further testimony will be taken.”*

The board may then hear additional appeals if there are any others on the docket for the day, or may decide to deliberate the appeal they have just heard prior to conducting another hearing. The Virginia Freedom of Information Act provides limited exceptions for going into closed session (legal advice from counsel on pending or potential litigation, etc.) for deliberations and there are procedural requirements which must be met in exercising that option, so if deliberations are not to be conducted in open session, it is advisable to discuss going into closed session with a legal representative prior to any such action.

VOTING AND VERBAL DECISION

In deliberations, it is permissible for discussions to ensue prior to a motion to resolve the case, or for any board member to move to resolve the case. The chair would yield the floor to any board member wishing to speak while controlling the overall debate. Board members may state their position and reasons for such position as a means to illicit all perspectives to assure complete and thorough deliberations. If there is a motion and a second to the motion to resolve the appeal, the chair may ask for discussion on the motion prior to calling for a vote. The motion should be made in a form similar to “I move to uphold (or overturn or amend) the decision of the code official for the following reasons ...” If the code official’s decision is to be amended, the amendments should be clearly stated in the motion.

Once deliberations are complete and a motion to resolve the appeal has been made and seconded, the vote is taken. The chair may exercise the option of abstaining from the vote unless it is necessary to break a tie vote. If the motion passes, it then becomes the verbal decision of the board for the appeal case. The decision is to be reflected in the minutes for the meeting, which should be prepared by the secretary and held for ratification at the next meeting of the board. The verbal decision shall be explained in writing and signed by the chair.

CHAPTER 5: THE DECISION

WRITTEN DECISION

As discussed in Chapter 4 of this manual, the verbal decision of the board in an appeal shall be explained in writing and signed by the Chair. It is the chair's responsibility, to assure that the written decision matches the minutes and accurately conveys the verbal decision voted upon by the board.

STATEMENT OF FURTHER RIGHT OF APPEAL

The appeals provisions of both the USBC and the SFPC require a statement of further right of appeal to be contained in the written decision. See Appendix C of this manual for the wording to be used.

NOTIFICATION OF DECISION

In addition, the appeals provisions of both the USBC and the SFPC call for the written decision of the local appeals boards to be sent to the parties by certified mail. This ensures that there is a record of when the decision was received by the parties, which then is used to determine whether any further appeal is filed within the timeframes required by the codes.

APPENDIX A: SAMPLE BYLAWS

Local Board of Appeals (Substitute actual name of board)

Article 1. Officers

- 1-1. The local board of appeals shall organize; and annually elect a chair and vice-chair and appoint a secretary in the month of _____.
- 1-2. The chair shall preside at meetings and hearings and shall decide points of order or procedure.
- 1-3. The vice-chair shall assume the duties of the chair in the chair's absence.
- 1-4. The secretary shall handle correspondence subject to these rules at the direction of the board; shall send out notices required by these rules; shall keep the minutes of the board's proceedings; and shall keep a file on each appeal which comes before the board.

Article 2. Meetings

- 2-1. Regular meetings of the local board of appeals for the hearing of cases shall be held on the _____ of each month at a designated time, unless there are no pending appeals before the board.
- 2-2. Special meetings may be called by the chair, provided at least five (5) days written notice of such meeting is given each member.
- 2-3. A majority of the board shall constitute a quorum.
- 2-4. Business conducted at meetings of the board shall follow Roberts' Rules of Order or other parliamentary procedure.
- 2-5. The board may adjourn a meeting if all applications or appeals cannot be disposed of on the meeting day, and no further notice shall be necessary for a continuation of such meeting.

Article 3. Procedure for Hearing Appeals

- 3-1. Appeals to the local board of appeals shall be filed with the code official on a form provided by the board and any applicable fees paid. The code official shall transmit the appeal application form to the secretary of the board along with all papers constituting the record of action upon which the appeal is based.

- 3-2. The applicant shall provide the secretary with all information requested on the form provided by the board and any such additional information or evidence as may be reasonably required consideration of the matter.
- 3-3. An application for appeal filed accordingly to the above shall be assigned an appeal number within five (5) days. Applications for appeals will be heard in the order they are received.
- 3-4. The secretary of the board shall schedule the appeal, notify all interested parties of the hearing and give notice including the time, date and place of the meeting to anyone requesting such information.
- 3-5. The applicant may appear in his own behalf at the hearing or may be represented by legal counsel or an agent.

Both the applicant and the code official may speak to the appeal and any person whose interests are affected may speak for or against the issue. The applicant shall be given an opportunity for final rebuttal.

- 3-6. The final decision on any appeal to the local board of appeals shall be in the form of a written decision that matches the minutes and accurately conveys the verbal decision voted upon by the board.
- 3-7. The board shall notify the interested parties and the code official of the decision within seven (7) days after the signing of the written decision by the chair, and in any event, within fourteen (14) days after the meeting in which the decision is made and within sixty (60) days of the date on which the application for appeal was filed.

Article 4. Records

- 4-1. A complete file on each appeal shall be kept by the secretary as part of the records of the local board of appeals.
- 4-2. All records of the board shall be public records.

Attest: _____
Chair

Secretary

APPENDIX B: SAMPLE APPEAL APPLICATION FORM

Appeal No. _____

Application for Appeal

Locality

I (we) _____ of _____
(Name) (Mailing address)

respectfully request that the Local Board of Appeals review the decision made on _____, 20__ by the code official.

Description of Decision Being Appealed: _____

Location of Property Involved: _____

What is the applicant's interest in the property?

- Owner
- Contractor
- Owner's agent
- Other (explain) _____

Relief Sought: _____

Attach the Decision of the Code Official and Any Other Pertinent Documents.

Signature of Applicant

Filed at _____, Virginia, the _____ day of _____, 20__

APPENDIX C: SAMPLE WRITTEN DECISION

Written Decision

Appeal No. _____

IN RE: _____ v. _____

The appeal is hereby _____, for the reasons set out below:

Date: _____

Signature _____
Chair of Local Board of Appeals

Note: Any person who was a party to the appeal my appeal to the State Building Code Technical Review Board by submitting an application to such board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, VA 23219, (804) 371-7150, or <https://www.dhcd.virginia.gov/sites/default/files/Docx/sbctrb/file-appeal/appeal-application-may-19.pdf>.

Albemarle County Board of Building Code Appeals
Bylaws

Article 1. Officers

- 1-1. The local board of appeals shall organize; and annually elect a chair and vice-chair and appoint a secretary at its first meeting of each calendar year.
- 1-2. The chair shall preside at meetings and hearings and shall decide points of order or procedure.
- 1-3. The vice-chair shall assume the duties of the chair in the chair's absence.
- 1-4. The secretary shall handle correspondence subject to these rules at the direction of the board; shall send out notices required by these rules; shall keep the minutes of the board's proceedings; and shall keep a file on each appeal which comes before the board.

Article 2. Meetings

- 2-1. Regular meetings of the local board of appeals for the hearing of cases shall be held on the third Wednesday of each month at a designated time, unless there are no pending appeals before the board.
- 2-2. Special meetings may be called by the chair, provided at least five (5) days written notice of such meeting is given each member.
- 2-3. A majority of the board shall constitute a quorum.
- 2-4. Business conducted at meetings of the board shall follow Roberts' Rules of Order or other parliamentary procedure.
- 2-5. The board may adjourn a meeting if all applications or appeals cannot be disposed of on the meeting day, and no further notice shall be necessary for a continuation of such meeting.

Article 3. Procedure for Hearing Appeals

- 3-1. Appeals to the local board of appeals shall be filed with the code official and any applicable fees paid. The code official shall transmit the appeal application form to the secretary of the board along with all papers constituting the record of action upon which the appeal is based.
- 3-2. The applicant shall provide the secretary with all information requested and any such additional information or evidence as may be reasonably required consideration of the matter.

3-3. An application for appeal filed accordingly to the above shall be assigned an appeal number within five (5) days. Applications for appeals will be heard in the order they are received.

3-4. The secretary of the board shall schedule the appeal, notify all interested parties of the hearing and give notice including the time, date and place of the meeting to anyone requesting such information.

3-5. The applicant may appear in his own behalf at the hearing or may be represented by legal counsel or an agent.

Both the applicant and the code official may speak to the appeal and any person whose interests are affected may speak for or against the issue. The applicant shall be given an opportunity for final rebuttal.

3-6. The final decision on any appeal to the local board of appeals shall be in the form of a written decision that matches the minutes and accurately conveys the verbal decision voted upon by the board.

3-7. The board shall notify the interested parties and the code official of the decision within seven (7) days after the signing of the written decision by the chair, and in any event, within fourteen (14) days after the meeting in which the decision is made and within sixty (60) days of the date on which the application for appeal was filed.

Article 4. Records

4-1. A complete file on each appeal shall be kept by the secretary as part of the records of the local board of appeals.

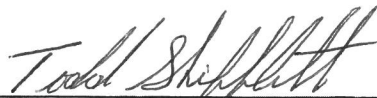
4-2. All records of the board shall be public records.

Adopted: October 21, 2020

Attest:



Chair



Secretary

Appeal Hearing:

A. Clifford and Khristina Hammill - #B2002-00338-SF

Appeal of Building Official Decision – April 27, 2022

COLLISON F. ROYER
PETER J. CARAMANIS
JESSICA F. PHILLIPS
ERNEST A. HARPER
SHANNON T. MORGAN
CHRISTIAN A. PATRIZIA

SHELLIE S. TAYLOR
SAMANTHA V. RICCI
PHILLIP D. WILLIAMS

July 26, 2022

VIA HAND DELIVERY

Michael Dellinger, Building Official
Albemarle County Community Development Office
401 McIntire Road, North Wing
Charlottesville, VA 22902
Email: mdellinger@albemarle.org

Todd Shifflett, Secretary of the BBCA
Albemarle County Community Development Office
401 McIntire Road, North Wing
Charlottesville, VA 22902

RE: Application for Appeal to Board of Building Code Appeals
Clifford and Khristina Hammill - #B2002-00338-SF
Appeal of Building Official Decision – April 27, 2022

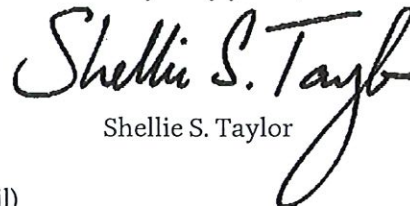
Dear Mr. Dellinger and Mr. Shifflett:

Enclosed please find an Application for Appeal to the Albemarle County Board of Building Code Appeals (“BBCA”) submitted on behalf of Clifford and Khristina Hammill in the above-referenced matter. This package is being submitted to Mr. Dellinger and Mr. Shifflett per the requirements of the Albemarle County BBCA Bylaws and the DHCD’s Board of Appeals Manual.

Our office has been unable to determine the specific filing fee for this Application of Appeal and will therefore bring a blank check to the Albemarle County Community Development Office upon hand delivery of this package. If there is no one available at the County Office to accept this package and confirm the filing fee amount, we ask that you please contact us immediately upon your receipt of the Application for Appeal and we will promptly deliver any necessary fee.

Thank you in advance for your assistance. Please do not hesitate to contact me if you have any questions.

Very truly yours,


Shellie S. Taylor

cc: Andy Herrick, Deputy County Attorney (By Email)
Doug Lowe, BBCA Chairperson (By Email)
Client (By Email)

Appeal No.: _____

APPLICATION FOR APPEAL

Locality: Albemarle County, Virginia

We, **Clifford and Khristina Hammill** (collectively, the “Applicant”), of **P.O. Box 303, Keene, VA, 22946**, by counsel, respectfully request that the Albemarle County Board of Building Code Appeals (hereinafter, “BBCA”) review the decision made on **April 27, 2022**, by Michael Dellinger, Building Official.

Description of Decision Being Appealed: See Attached **Exhibit A**

Location of Property Involved: 6591 Blenheim Road, Scottsville, VA 24590

What is the Applicant’s interest in the property?

- Owner
- Contractor
- Owner’s agent
- Other (explain) _____

Relief Sought: See Attached **Exhibit A**

Attach the Decision of the Code Official and Any Other Pertinent Documents:
See Attached **Exhibit B**



Attorney for Applicant

Filed at _____, Virginia, the ____ day of July, 2022.

EXHIBIT A

Description of Decision Being Appealed:

Applicant was issued a building permit, Application #B2002-00338-SF on April 9, 2002 (the "Permit"), under the Virginia Uniform Statewide Building Code effective September 15, 2000 (the "2000 USBC"), in connection with Applicant's construction of a new dwelling (the "Project") located at 6591 Blenheim Road, Scottsville, VA 24590 (the "Property").

As an initial matter, it is important to note the following facts about the 2000 USBC in relation to this Application for Appeal:

- The 2000 USBC does not include any provision for "expiration" of a permit.
- Section 110.6 (Suspension of permit) of the 2000 USBC provides that, "[a]ny permit issued shall become invalid if work on the site authorized by the permit is not commenced within six months after issuance of the permit, **or if the authorized work on the site is suspended or abandoned for a period of six months after the time of commencing the work...** It shall be the responsibility of the permit applicant to prove to the code official that work has not been suspended or abandoned" (emphasis added).
- Section 122.5 (Application for appeal) of the 2000 USBC provides that, "[t]he owner of a structure...may appeal the code official's decision concerning application of the USBC...The applicant shall submit a written request for appeal, indicating specific requirements, to the BBCA within **90 calendar days** from the receipt of the decision to be appealed" (emphasis added).

The Permit and all work performed thereunder are subject to the 2000 USBC, not the current code or any iteration of the code in the intervening years between approval of the Permit and present day. In fact, the County has acknowledged through correspondence from the Building Official and the Deputy County Attorney that the 2000 USBC is the applicable building code for analysis of this situation. Accordingly, this Application for Appeal is subject to the 90-day filing deadline and is timely submitted.

In October 2021, Applicant contacted various representatives at the Albemarle County (the "County") Office of Community Development to schedule a County inspection for new electrical service installation at the Property in connection with the Project. Applicant was informed that the Permit is no longer active in the County computer system. Applicant continued to press for additional answers and on October 28, 2021, Michael Dellinger responded to Applicant's inquiries offering his explanation of the Permit status and why the County records indicate that the Permit "expired" on November 28, 2002, only seven (7) months after the Permit was issued.

Over the next few months, discussions continued and the parties explored options for addressing the Permit status. On April 27, 2022, Mr. Dellinger send another email communication to Applicant stating that i) the County no longer has any documents or copies of the permitted drawings for the Project, and ii) Applicant could either submit their copy of the drawings and

obtain a one-year extension or a new permit application would be required. A copy of the April 27, 2022, email is attached hereto as part of Exhibit B (the “April 27 Email”).

The County has made clear that it considers the April 27 Email to be a determination of the Building Official subject to appeal, despite the ongoing conversation and discussions surrounding the status of the Permit. Although Applicant questions whether this truly constitutes a final, appealable decision, Applicant is submitting this Application for Appeal to preserve its appeal right under the 90-day deadline of the 2000 USBC.

The decision being appealed under this Application for Appeal is the April 27 Email, and more specifically, the Building Official’s statements that:

- “...I will provide you with an extension of your original permit for one year with the understanding that the project must be completed and receive a certificate of occupancy within that time frame.”
- “No additional extensions will be granted to complete the project,” and
- “Since no inspections have occurred on your previous work, an application for a new permit would be subject to today’s safety standards and code requirements.”

The Building Official’s decision is based on an erroneous application of the USBC, and therefore, subject to appeal under Section 122.5 of the 2000 USBC. The Building Official “determined” that the Permit was subject to the granting or rejection of extensions and imposed a one-year deadline on the Project, confirming the County’s position that the Permit is “expired” or “invalid.” The Building Official further determined that if the arbitrary one-year deadline could not be met, a new permit would be subject to current code requirements “since no inspections have occurred on [the] previous work.” This is both an incorrect application of the applicable USBC and factually inaccurate, as there were inspections that occurred at the Project, even after the alleged “expiration” date in the County’s system.

Under the 2000 USBC, a permit only becomes invalid if “work on the site authorized by the permit is not commenced within six months after issuance of the permit, or if the authorized work on the site is suspended or abandoned for a period of six months after the time of commencing the work.” There is no dispute here that work was commenced on time, and the multiple inspections that took place in 2002 are evidence of that commencement. Given that, the only basis for revocation under the 2000 USBC was if work were to cease for a period of six months after it was commenced.

The Applicant can and has previously certified to the Building Official that there has never been a six-month period since the issuance of the Permit during which no work was done on the Project. Mr. Hammill has done the work himself on a pay as you go basis, hence the slow progress, but he has regularly performed work on the Project during weekends and some weeknights over the last many years. Further, there has been significant progress. The grading and exterior of the home on the Property are completely finished. Accordingly, there has never been a basis for revocation, nor did Applicant ever receive any notice of a purported revocation from anyone at the County, which they would have immediately disputed.

In addition, it is critical to point out that no inspections were requested or performed by the County over the past many years, and there is no affirmative obligation in the 2000 USBC for an applicant

to prove the continuation of work at any particular interval or in any way other than their testimony and the evident visible progress of the project. That is exactly what Applicant is offering in this case.

Given that there was no expiration of the Permit and no basis for revocation or attempted revocation, the Permit remains valid to date, regardless of what the County's computer system may say. The County's failure to maintain appropriate and accurate records related to the Permit is also no basis for its termination. In fact, as previously noted, the County's system which purportedly shows issuance of the permit on 4/9/2002 and an "expiration" date of 11/28/2002, bears no connection to reality. It does not reflect a six-month timeline and is not consistent with the fact that inspections for ongoing work occurred at least three times between those dates, despite Mr. Dellinger's claim otherwise in the April 27 Email. It is further inconsistent with communications with other building officials, additional Property inspections, real estate assessments, and other correspondence in the years since. All of this, in conjunction with the Applicant's certification of continued work, is and should be sufficient to prove to the Building Official that work, although admittedly slow moving, has continuously progressed since the Permit was issued.

Relief Sought:

Applicant seeks for the County to i) acknowledge that inspections have in fact occurred at the Project since the Permit was issued and since the alleged "expiration" date, ii) acknowledge that the facts of this situation and the direct assertions of Applicant are sufficient to prove that work on the Project has not been suspended, and therefore, no extensions of the Permit are necessary or appropriate under the 2000 USBC, iii) acknowledge that the Permit is valid under the 2000 USBC, and iv) complete the pending electrical inspection for the Property so that the Project may continue.

EXHIBIT B

Additional Documents

Lisa Busch

From: Michael Dellinger <mdellinger@albemarle.org>
Sent: Wednesday, April 27, 2022 3:10 PM
To: Cliff and Krisy Hammill
Cc: Charles Rapp; Jodie Filardo
Subject: Next steps

Good afternoon Mr. Hammill,

Thank you for your patience as we explored what options may be available based on your situation. Due to the extensive time frame from the date of your permit, the county no longer has any documents or copies of the permitted drawings for your project; however, if you can produce a copy of the original stamped drawings for our records, I will provide you with an extension of your original permit for one year with the understanding that the project must be completed and receive a certificate of occupancy within that time frame. No additional extensions will be granted to complete the project.

If the project is not on jurisdictional services, you will need to provide a valid health department construction or operations permit. In order to comply with state regulations, you will also need to sign any in lieu of agreements for erosion and sediment controls.

If you are unable to provide a copy of the permitted drawings and/or believe that you cannot accomplish your project in the time frame provided, a new permit can be issued that provides you with a three-year time limit for completion. Since no inspections have occurred on your previous work, an application for a new permit would be subject to today's safety standards and code requirements. Over the 20-year period dating back to your original permit, there have been six building code cycles which have included significant safety improvements for residential structures.

Please let me know if you have any additional questions.

Thanks,

*M. A. Dellinger, CBO
Building Official
Vice Chair Region 4 VBCOA
Albemarle County
mdellinger@albemarle.org
office 434-296-5832 X3228
401 McIntire Road, North Wing, Charlottesville, Va 22902
All decisions subject to appeal in accordance
with Chapter 119 of the VCC*



County of Albemarle BUILDING PERMIT

Building Code and Zoning Services
401 McIntire Road
Charlottesville, VA 22902-4596
Tel. (434) 296-5832 • Fax (434) 972-4126

Land Use _____ Yes _____ No
Permit # 2002-3389
Project # 2002-0034

PERMIT PAID: CK CASH
THER Need

OWNER
NAME Clifford G. Harrell
ADDRESS P.O. Box 303
CITY Keene VA 22946
PHONE 296-5839 ext 3395
(H) 281-2185

CONTRACTOR
NAME (name)
ADDRESS _____
CITY _____
PHONE _____
State Reg. _____ County _____ Exempt _____

Type of Frame
 Masonry Wood Steel
Type of Water Supply
 Public Private C. Well
Type of Heating/Mechanical
 Oil Gas Elec. HP
Type of Sewage Disposal
 Public Septic
 Fireplace Wood Stove
 Other Gas Logs

MECHANICS LIEN
NAME _____
ADDRESS _____
CITY _____
PHONE _____

Mass of Work:
 NEW ADDITION ALTERATION Other

Describe Work: Single family

No. of Stories 1 Sq. ft. 1st Floor 2834 2nd Floor 0 Garage 621 Fin. Basement _____ Unfin. Basement 1161 Decks _____
FP 1160
DR 360

PROPOSED USE ? Rough in bsmt
 One Family 4 Bedrooms 3 Baths
 Garage 0 Carport 1 Kitchen
Other _____

SET BACKS
Front 15
Back 35
R. Sd. 25
L. Sd. 25

Crawl Space Slab
Value of Work
150,000

Engineering 25.00
Zoning 20.00
Permit Fee 510.80
1% Surcharge 5.11
Total 500.91

Mapping RA Dist. QW School Dist. 50V
Map/Parcel D200000000550 Acres 2.631
3 Blk. _____ Sec. _____ Phase _____

Type of Const. SR Use Group 24 Floor Live Load 30/40
Size of Bldg. (Total) Sq. Ft. _____ No. of Stories 1 Max. Occ. Load _____
No. of Dwelling Units 1 No. of Accessory Structures _____ Fire Sprinklers Required Yes No

Plans Reviewed By BEA Zoning Approved for Issuance 2/28/02 Building Approved for Issuance By _____

Zoning Pre-Construction Yes No Building Pre-Construction Yes No Fire Alarms Required Yes No

NOTICE
SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL, PLUMBING, HEATING, VENTILATING OR AIR CONDITIONING.
THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED NOT COMMENCED WITHIN 6 MONTHS, OR IF CONSTRUCTION OR WORK IS SPENDED OR ABANDONED FOR A PERIOD OF 6 MONTHS AT ANY TIME AFTER WORK IS COMMENCED.
I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS APPLICATION AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. THE GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

SPECIAL APPROVALS	REQUIRED	RECEIVED	NOT REQUIRED
Zoning	<input checked="" type="checkbox"/>	2/28/02	<input type="checkbox"/>
Health Dept.	<input checked="" type="checkbox"/>		<input type="checkbox"/>
Engineering	<input checked="" type="checkbox"/>	2/22/02	<input type="checkbox"/>
Service Authority	<input type="checkbox"/>		<input checked="" type="checkbox"/>
Planning	<input type="checkbox"/>		<input checked="" type="checkbox"/>
Highway Dept.	<input type="checkbox"/>		<input checked="" type="checkbox"/>
Prel./Final Zoning	<input checked="" type="checkbox"/>		<input type="checkbox"/>
Recorded Plat	<input type="checkbox"/>		<input checked="" type="checkbox"/>
Site Plan	<input type="checkbox"/>		<input checked="" type="checkbox"/>
ARB	<input type="checkbox"/>		<input checked="" type="checkbox"/>

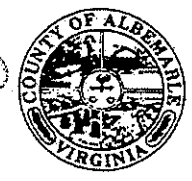
SIGNATURE OF CONTRACTOR OR AUTHORIZED AGENT _____ DATE 2/28/02
SIGNATURE OF OWNER (IF OWNER/BUILDER) _____ DATE _____

REAL ESTATE DEPT.	APPRAISED VALUE
LAND	\$ _____
BUILDINGS	\$ _____
TOTAL	\$ _____

Road 0.995 mile S of
W 100' of 112

Owner: Cliff Hammill
Contractor: _____

13200-00-00-02580
NSD Rt. 795 2/6 mi.
S. of inter. Rt. 713



**COUNTY OF ALBEMARLE
DEPARTMENT OF INSPECTIONS
296-5832**

Date: 6/11/02 Bldg. Permit No. 02-307 SE Permit No.: _____
Time: 10:05 Type of Inspection: Pier Hole/Chimney Pads
 Approved Rejected

COMMENTS:

[Handwritten signature]

Inspector

[Handwritten date]

Owner: Clifford Hammill
Contractor: _____



122-258
N. SD Rt. 795 2/10 mi.
S. of inter. w/ Rt.
713

COUNTY OF ALBEMARLE
DEPARTMENT OF INSPECTIONS
296-5832

Date: 5/28/02 Bidg. Permit No. 02-338 SF Permit No. E02-658 1P
Time: 11:30 Type of Inspection: Temp Svc.
 Approved Rejected

COMMENTS:

_____ E 21.795 p 25 713

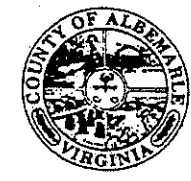
Inspector

[Handwritten signature]

[Handwritten signature]

Rt 795
122-2212

Owner: Clifford H...
Contractor: _____



(Signature)
1102

**COUNTY OF ALBEMARLE
DEPARTMENT OF INSPECTIONS
296-5832**

Date: 4/24/02 Bldg. Permit No. 02-3385F Permit No. _____
Time: 11:29 Type of Inspection: Ft/PZ
 Approved Rejected

COMMENTS:

Pz approved from property lines shown to me.

(Signature)

Inspector
(Signature)

ORIGINAL - White
DUPLICATE - Canary
TRIPLICATE - Pink

County of Albemarle
Department of Building Code
Telephone (434) 296-5832

43543

Date 4/9/02

RECIEVED OF

Cliff Hammill

Seven hundred thirty seven

72/100

\$ 737.72

307 \$ 20

310 \$ 75

314 \$ 50

check 1270

308 \$ 510.86

312 \$ 50

510 \$ 6.86

cash _____

2-1000-13000-130324

\$ 25

2002-3385F

By M. M. M. M.
Director of Finance



PERMIT FOR ELECTRICAL WORK
COUNTY OF ALBEMARLE
Department of Inspections
296-5832

Electrical Permit # E02-6595F

Building Permit # 02-3383F

Date: 3/27/02

Owner: Clifford Hamm Phone: _____

Mailing Address: _____

Location: _____

Subdivision _____ Lot _____ Tax Map _____

Work to be done Wiring

I understand the inspections must be made before work can be concealed and/or energized and the person doing the work must call for the inspection.

Permit Fee: 50.30 Company Name _____

[Signature] Signed By _____

Address _____

Phone # _____

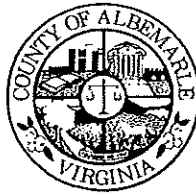
Issued by: [Signature]
Building Official

License Information:

Class A or B # : _____ ZONING _____

Expiration Date: _____

County Lic.: Yes _____ No _____



PERMIT FOR MECHANICAL WORK
COUNTY OF ALBEMARLE
Department of Inspections
296-5832

Mechanical Permit # M02-5295F

Building Permit # 02-3385F

Date: 4/9/02

Owner: Hammil Phone: _____

Mailing Address: _____

Location: _____

Subdivision _____ Lot _____ Tax Map _____

New/Replace	Type of Equipment	BTU
N or R	<u>oil furn</u>	_____
N or R	_____	_____
N or R	_____	_____
N or R	_____	_____

of Supplies _____ # of Returns _____

Permit Fee: 50.50 Company Name Same

Contract Amt: _____ Signed By _____

Address _____

Phone # _____

Issued by J S / Mac
Building Official

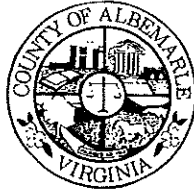
License Information:

ZONING _____

Class A or B # : _____

Expiration Date: _____

County Lic.: Yes _____ No _____



PERMIT FOR PLUMBING WORK
COUNTY OF ALBEMARLE
Department of Inspections
296-5832

Plumbing Permit # PO2-5485F

Building Permit # 02-33855

Date: 4/9/02

Owner: Nammie Phone: _____

Mailing Address: _____

Location: _____

Subdivision _____ Lot _____ Tax Map _____

Type of Water Supply: Public _____ Private _____ Well _____

Type of Sewage Disposal: Public _____ Private (septic tank) _____

Number of Fixtures: 1 RZ basement

<u>3</u> water closets	_____ wash trays	_____ roof drains
<u>1</u> sinks	<u>1</u> floor drains	_____ sprinkler heads
<u>2</u> bath tubs	<u>1</u> automatic washer	_____ water line
<u>1</u> shower baths	<u>1</u> hot water heater	_____ sewer lateral
<u>3</u> lavatories	<u>2</u> outside faucets	_____ other _____
_____ urinals	_____ mobile homes	_____ other _____

I understand the inspections must be made before work can be concealed and the person doing the work must call for the inspection.

Permit Fee: 50.52

Company Name: same

Contract Amt: _____ Signed By _____

Address _____

License Information: _____

Class A or B #: _____

Phone # _____

Expiration Date: _____

Issued by: J. J. Mat
Building Official

County Lic.: Yes _____ No _____



PERMIT FOR ELECTRICAL WORK
COUNTY OF ALBEMARLE
Department of Inspections
296-5832

Electrical Permit # ED2-658 TP

Building Permit # 2002-3385F

Date: 2/20/02

Owner: Clifford Hammill Phone: _____

Mailing Address: _____

Location: _____

Subdivision _____ Lot _____ Tax Map _____

Work to be done Temp Service

I understand the inspections must be made before work can be concealed and/or energized and the person doing the work must call for the inspection.

Permit Fee: 2525 Company Name _____

Signed By Clifford H. Hammill

Address _____

Phone # _____

Issued by: A S I Mat
Building Official

License Information:

Class A or B # : _____ ZONING _____

Expiration Date: _____

County Lic.: Yes ___ No ___



**COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF HEALTH**

Albemarle County Health Department
PO Box 7546
Charlottesville, VA 22906
(434) 972-6259

SEWAGE DISPOSAL SYSTEM OPERATION PERMIT

**Tax Map No.: 122-25B
Type of Property: Residential
Health Dept. Id. 101-02-0130**

Building Permit # 2002-338SF

**Hammill, Clifford G., P O Box 303, Keene, 22946 (434) 286-2485, is Hereby Granted
Permission to Operate a Type I Sewage System, Having Design Capacity of 600 gallons per
day, and 4 Bedrooms at 6591 Blenheim Road , Scottsville, VA 24590**

Subdivision	Section	Lot

This Permit is Issued in Accordance with the Provisions of Title 32.1, Chapter 6 of the Code of Virginia as Amended and Section(s) 12-VAC5-610-340 of Sewage Handling Disposal Regulations of Virginia Department of Health and permit dated 02/04/2002.

February 17, 2005
Effective Date

William A. Craun
EHS


Approved

**Copy for :
Property Owner or Agent**

Please keep for your records!



**COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF HEALTH**

Albemarle County Health Department
PO Box 7546
Charlottesville, VA 22906
(434) 972-6259

PRIVATE WELL SYSTEM OPERATION PERMIT

Tax Map No.: 122-25B
Health Dept. Id. 101-02-0130

Building Permit# 2002-338 SF

Hammill, Clifford G., P O Box 303, Keene, 22946 (434) 286-2485, is Hereby Granted Permission to Operate a Class IIIB Well, located at 6591 Blenheim Road, Scottsville, VA 24590.

Subdivision	Section	Lot

This Permit is Issued in Accordance with the Provisions of Title 32.1, Chapter 6 of the Code of Virginia as Amended and Section(s) 12-VAC5-630-330 of Private Well Regulations of the Virginia Department of Health and permit dated 03/04/2002.

February 17, 2005
Effective Date

William A. Craun
EHS

Chadwell for Bl.
Approved

Water Supply and/or Sewage Disposal System Construction Permit

Commonwealth of Virginia
 Department of Health
ALBEMARLE CO. HEALTH DEPARTMENT

Health Department
 Identification Number: 101-02-0130
 Tax Map Number: 122-25B

General Information

BP#: 2002-338 SF

Water Supply System: **NEW** Sewage Disposal System: **NEW**
 Based on the application for a sewage disposal system construction permit filed in accordance with Section 2.13 E, of the Sewage Handling and Disposal Regulations and/or Section 2.13 of the Private Well Regulations a construction permit is hereby issued to:
 Owner: **CLIFFORD G. HAMMILL** Telephone: 434-286-2485
 Address: **P O BOX 303, KEENE, VA 22946**
 For a Type I Sewage Disposal System or Well to be constructed on/at **EAST OF ROUTE 795, 0.25 MILES SOUTH OF ROUTE 713**
 Sec/Bk Lot Actual or estimated water use **600 gpd - 4 bedrooms**

DESIGN

NOTES: SEWAGE DISPOSAL SYSTEM INSPECTION RESULTS

Water supply, **TO BE INSTALLED**

Water supply location: Satisfactory yes no ___
 GROUT *Perforate* CAP *At West Dickens* **III well Installed Instead**
 EHS **J.K.K.** DATE **12/03/2004**

To be installed: **CLASS: IIB**
CASED: 50 feet GROUTED: 50 feet

Building Sewer: **4"** I.D. PVC Schedule 40, or equivalent. Slope 1.25" per 10ft.(min.)
 Other

Building Sewer: Satisfactory yes no ___ **of IIB Well**
 EHS **J.K.K.** DATE **12/03/2004**

Septic Tank: Capacity: 1200 Gals.(min.)

Pretreatment unit: Satisfactory yes no ___

Other **1500 gallon Tank**

EHS **J.K.K.** DATE **12/03/2004**

Inlet-outlet structure: PVC Schedule 40, 4" tees or equivalent.
 Other

Inlet-outlet structure: Satisfactory yes no ___
 EHS **J.K.K.** DATE **12/03/2004**

Pump and pump station:
NO

Pump & pump station: Satisfactory yes no
 EHS DATE **N/A**

Gravity mains: 3" or larger I.D., min. 6" fall per 100 ft., 1500 lb. crush strength or equivalent. Other

Conveyance method: Satisfactory yes no ___
 EHS **J.K.K.** DATE **12/03/2004**

Distribution Box: Precast concrete with 6 ports.
 Other **#12 D-Box**

Distribution box: Satisfactory yes no ___
 EHS **J.K.K.** DATE **12/03/2004**

Header lines: Material: 4" I.D. 1500 lb. crush strength plastic or equivalent from distribution box to 2 ft into absorption trench. Slope 2" min. Other **Smooth Bore**

Header lines: Satisfactory yes no ___
 EHS **J.K.K.** DATE **12/03/2004**

Percolation lines: Gravity 4" plastic 1000 lb. per foot bearing load or equiv. slope 2" - 4" (min. max.) per 100ft
 Other

Percolation lines: Satisfactory yes no ___
 EHS **J.K.K.** DATE **12/03/2004**

Absorption trenches:
 Sq ft. required: 1500 depth from ground surface to bottom of trench **48"**
 aggregate size **.5-1.5"**
 Trench bottom slope **2-4"/100 ft**
 center to center spacing **09 FT**
 Trench width **36"** Depth of aggregate **13"**
 Trench length **100 ft**
 Number of trenches **5**

Absorption trenches: Satisfactory yes no ___
 EHS **J.K.K.** DATE **12/03/2004**

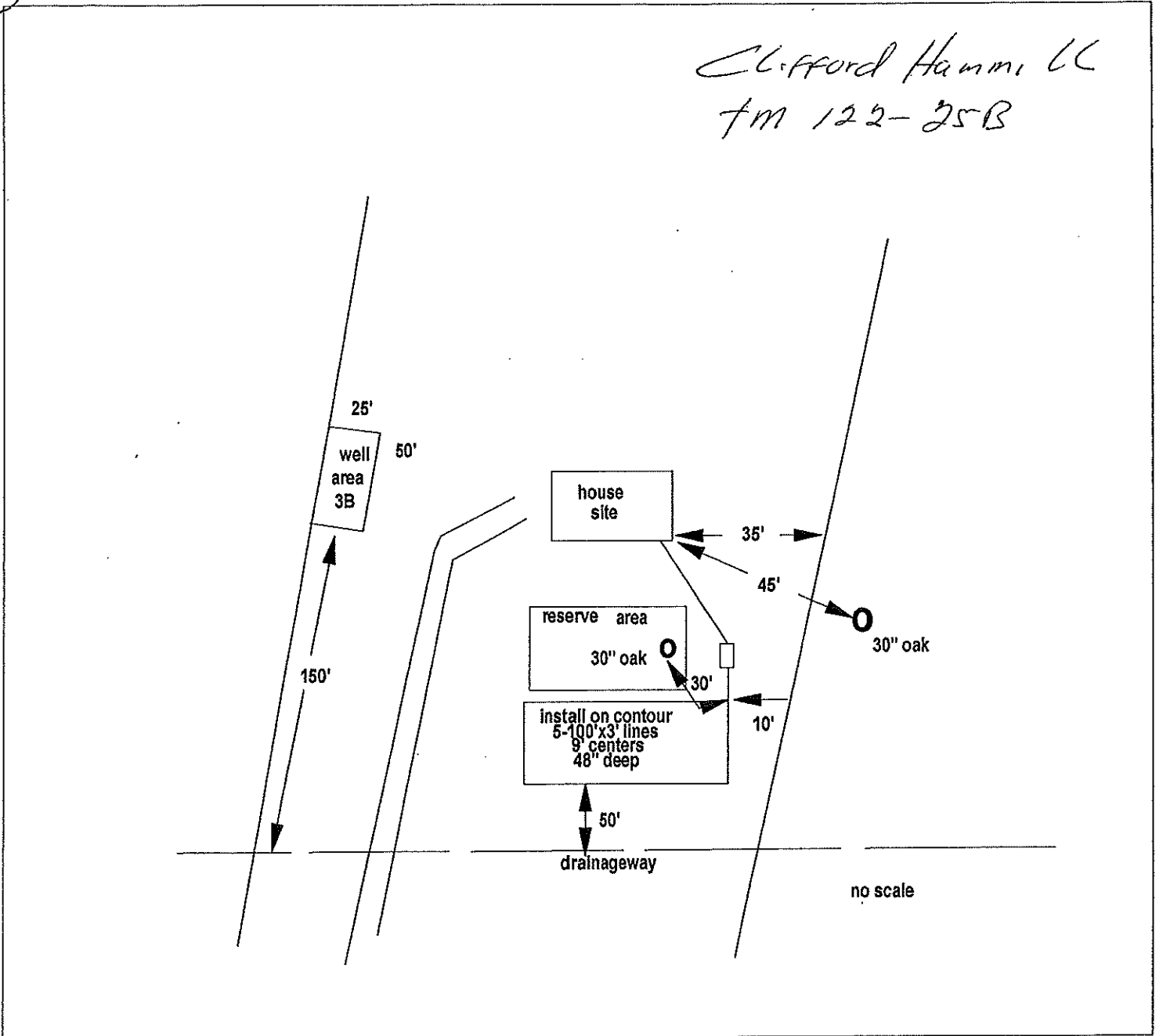
Date **12/03/2004** Approved by: *[Signature]*
 Environmental Health Specialist

AS-BUILT - ON-REVERSE

Schematic drawing of sewage disposal and/or water supply system and topographic features.

Show the lot lines of the building site, sketch of property showing any topographic features which may impact on the design of the well or sewage disposal system, including existing and/or proposed structures and sewage disposal systems and wells within 200 feet. The schematic drawing of the well site or area and/or sewage disposal system shall show sewer lines, pretreatment unit, pump station, conveyance system, and subsurface soil absorption system, reserve area, etc. When a nonpublic drinking water supply is to be permitted, show all sources of pollution within 200 feet.

The information required above has been drawn on the attached copy of the sketch submitted with the application.



This sewage disposal system and/or water supply is to be constructed as specified by this permit.

This sewage disposal system and/or well construction permit is null and void if (a) conditions are changed from those shown on the application (b) conditions are changed from those shown on the construction permit.

No part of any installation shall be covered or used until inspected, corrections made if necessary, and approved, by the local health department or unless expressly authorized by the local health dept. Any part of any installation which has been covered prior to approval shall be uncovered, if necessary, upon the direction of the Department.

Date: 2/4/02

Issued by: [Signature]
Environmental Health Specialist

Date: _____

Reviewed by: _____
Environmental Health Supervisor

This Construction Permit Valid until 9/4/03

Completion Statement

Commonwealth of Virginia
State Department of Health

Health Department
Identification Number 101-02-0130
Abemarle Co. Health Department

Name of Company/Corporation/Individual: Clifford G. Hammill

Address: PO Box 303 Keene, VA 22946 Telephone: 434-286-2485

Owner's Name Clifford G. Hammill

Owner's Address PO Box 303 Keene, VA 22946

Location of Installation: Lot _____ Block _____

Section: _____ Subdivision: _____

Other: 6591 Blenheim Road Scottsville, VA 24590

I hereby certify that the onsite sewage disposal system has been installed and completed in accordance with the construction permit issued (date) FEBRUARY 4, 2002 and is in compliance with Part D of the Sewage Handling and Disposal Regulations and when appropriate the plans and specifications for the project.

FEBRUARY 16, 2005
Date

Clifford G. Hammill (owner)
Signature and Title

CURRENT OWNER	TOPO	UTILITIES	STRT/ROAD	LOCATION	2021 ASSESSMENT		
HAMMILL, CLIFFORD GEORGE	0 Rolling	1 Private Well	3 State Rd. - Pa	2 Stable	Description	Appraised	Assessed
P O BOX 303					Building	168200	168200
					Out Building	0	0
					Extra Feature	0	0
SUPPLEMENTAL DATA							
Alt ID 12200000025B0		Zone RA:Rural Areas					
Magesteria 5:Scottsville		Land Use 0:No					
Ag/For Dist 99:Not in A/F District		Land Use I N:No					
AFD Rene		Land Pend					
OSUA Exp		Asmt Reas 50:No Additional Chan					
Comp. Pla 16:Rural Area							
Gis ID 481869836002		ASSOC PID#					
					Total	250300	250300

KEENE VA 22946
 6591 Blenheim Rd
 Scottsville VA 24590

92-4179
 Alb. County
 Inspections

RECORD OF OWNERSHIP	BK-VOL/PAGE	SALE DATE	Q/U	VI	SALE PRICE	VC
HAMMILL, CLIFFORD GEORGE	0 0	08-06-1990	U	I	0	07

PREVIOUS ASSESSMENTS (HISTORY)								
Year	Desc	Appraised	Year	Desc	Appraised	Year	Desc	Appraised
2020	Build	157900	2019	Build	152100	2018	Build	145200
	OB	0		OB	0		OB	0
	XF	0		XF	0		XF	0
	Land	71200		Land	65700		Land	54700
Total		229100	Total		217800	Total		199900

ASSESSING NEIGHBORHOOD			
Neighborhood	State Code	Tax Type	Deeded Acres
MA319 Market Area 319	2A	2	3

APPRAISED VALUE SUMMARY	
Appraised Bldg. Value (Card)	168,200
Appraised XF (B) Value (Bldg)	0
Appraised OB (B) Value (Bldg)	0
Appraised Land Value (Bldg)	82,100
Special Land Value	0
Total Appraised Parcel Value	250,300
Valuation Method	C
Adjustment	
Total Appraised Parcel Value	250,300

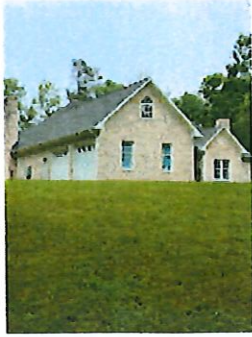
Building Note 11, Parcel Description, Old Neighborhood, Assessor ID

481985836067	RAN04	DLG
ACREAGE 3	Builder Name	

BUILDING PERMIT RECORD								
Permit ID	Issue Date	Permit Type	Description	Work Value	Status Date	% Comp	Progress Da	Work Desc
B20020033 02338	04-09-2002 02-20-2002	SF 4	New House	150,000 150,000	04-09-2002	100	01-01-2008	SINGLE FAMILY RE BY OWNER

VISIT / CHANGE HISTORY						
Date	Type	IS	ID	Cd	Purpost/Result	
01-06-2021	02		CDC	01	Permit	
05-02-2019	02		CDC	01	Permit	
09-28-2009			AO	09	Neigh Review	

LAND LINE VALUATION SECTION														
B#	L#	Use co	S.I.	Zone	Type	Units	Acres	Unit Price	Adjustment 1	Adjustment 2	Adjustment 3	Adjustment 4	Adj Unit Price	Land Value
1	1	210R	R	RA	HS1	1 BL	2.000	75,000					75,000	75,000
1	2	210R	R	RA	RS1	0.630 AC	0.630	11,300					11,300	7,100
Total Card Land Units						0.630 AC	Parcel Total Land Area: 2.6300			Total Land Value				82,100



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1829K



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1626K

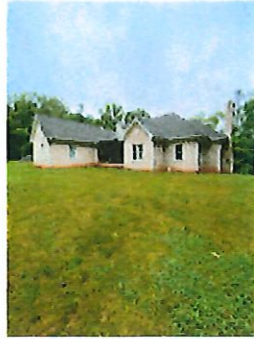


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692K

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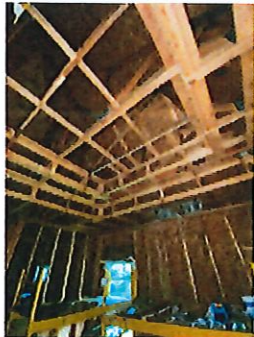
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NOTE:

Residential dwelling plans have been redacted pursuant to *Virginia Code* § 36-105.3.



COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4596
Phone (434) 296-5832

Appeal of Clifford Hammill

August 9, 2022

Clifford Hammill applied for a building permit for a new single-family dwelling on February 21, 2002, which was reviewed and issued on April 9, 2002, over twenty years ago. At that time, the 1996 Uniform Statewide Building Code (VUSBC) was the effective code edition used. Mr. Hammill contends that he still has a valid permit and also is subject to the appeals process from that period.

Per Section 110.6 of the 1996 regulations, a permit becomes invalid if authorized work on the site is suspended or abandoned for a period of six months after commencement. The permit applicant has the responsibility (a) to prove to the code official that work has not been suspended or abandoned and (b) to make a written request to the code official to extend a permit if desired. See the referenced code section below:

Section 110.6. Suspension of permit: Any permit issued shall become invalid if work on the site authorized by the permit is not commenced within six months after issuance of the permit, or if the authorized work on the site is suspended or abandoned for a period of six months after the time of commencing the work; however, permits issued for building equipment such as plumbing, electrical and mechanical work shall not become invalid if the building permit is still in effect. It shall be the responsibility of the permit applicant to prove to the code official that work has not been suspended or abandoned. Upon written request, the code official may grant one or more extensions of time, not to exceed one year per extension.

During my 5-year tenure, the permit owner has not had any contact or provided a written request to keep his permit valid. Therefore, by regulation, the 2002 permit is invalid. Any further action would be subject to the current regulations.

In addition, the appeal itself is subject to a filing deadline of 30 days. All e-mail correspondence from the code official, including the April 27 determination under appeal, provides the following appeals notice:

*All decisions subject to appeal in accordance
with Chapter 119 of the VCC*

This appeal should not be heard as the applicant did not file for the appeal in accordance with the regulation below.

119.5 Right of appeal; filing of appeal application. Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 30 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the building official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a building official's decision.

COUNTY OF ALBEMARLE



MEMORANDUM

TO: Albemarle County Board of Building Code Appeals

FROM: Andrew H. Herrick, Deputy County Attorney

DATE: August 13, 2022

RE: Appeal of Official Determination – Clifford & Khristina Hammill

On behalf of the County, the County Attorney’s Office submits the following summary of legal issues raised in the appeal of Clifford and Khristina Hammill (the “Appellants”).

1. Summary of Facts

The Appellants own Parcel 122-25B (the “Subject Property”), at 6591 Blenheim Road in Scottsville. On February 21, 2002, Mr. Hammill applied for Building Permit B2002-00338-SF (the “Subject Permit”) for a single-family dwelling on the Subject Property. The permit was issued on April 9, 2002. Footing inspections were performed a few months later, but until recently, Mr. Hammill had requested no further building inspections since 2002.

A building permit is considered invalid if the authorized work is suspended or abandoned for a period of six months. Because the Appellants had not requested any building inspections since 2002, the County was unaware of any activity, and reasonably believed that authorized work on the site had been suspended or abandoned. At some point, as part of a routine records disposal dictated by the Library of Virginia, the County disposed of records believed to be no longer necessary, including the Appellants’.

Following almost a 20-year lapse, Mr. Hammill reached out to the Building Official on October 20, 2021. Following an exchange, by e-mail of April 27, 2022, the Building Official advised Mr. Hammill that he’d have to obtain a new building permit. Because the regulation requires permittees to keep a copy of the approved set of construction documents on site, the Building Official also advised that if Mr. Hammill could provide his copy of the approved drawings and his Health Department approval, the County could expedite his application. Through their attorney, the Appellants appealed the Building Official’s determination exactly 90 days later, on July 26, 2022.

2. This Appeal Should Summarily Be Dismissed as Untimely.

The subject permit was issued on April-9, 2002, under the 1996 Unified Statewide Building Code (USBC), whose effective date was September 15, 2000. However, because both the determination and appeal were made this year, the appeal itself is governed by the current version of 13VAC5-63-190 (USBC Section 119). In *In Re: Appeal of North Park Street, L.C.* (Appeal No. 98-10) (attached), the State Building Code Technical Review Board affirmed the use of the current USBC to govern appeal procedures, applying the Review Board’s Interpretation No. 4/93:

“QUESTION #1: In appealing a decision of the building official, are the current appeals procedures used, or, if the building or structure was constructed under a previous edition of the code, are the appeals procedures under the previous edition used; and, how does this correlate with § 100.6?”

ANSWER #1: The edition of the USBC in effect at the time the application for appeal is made is used for appeal procedures. Technical issues upon which the appeal is based are according to the model code enforced at the time of the building permit application.”

Based on this Interpretation No. 4/93, the Review Board went on to dismiss as “invalid” an appeal that would have been timely under the USBC at the time of permit issuance, but was no longer timely under the USBC at the time of the appeal.

Under the applicable current Code, 13VAC5-63-190(E) (USBC Section 119.5) provides in relevant part:

“Any person aggrieved by the local building department's application of the USBC or the refusal to grant a modification to the provisions of the USBC may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 30 calendar days of the receipt of the decision being appealed. . . . Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a building official's decision.”

In this case, the Appellants appealed the Building Official’s April 27 determination 90 days afterwards, on July 26. The Appellants’ failure to submit an application for appeal within the 30-day limit established by 13VAC5-63-190(E) constitutes acceptance of the Building Official's April 27 decision. Therefore, the Board lacks jurisdiction to even hear this appeal, and must dismiss it summarily on those grounds.

3. The Building Official’s Determination Was Correct.

Even if the Board were to consider the Appellants’ underlying appeal, the Building Official correctly determined that the 20-year-old Subject Permit was invalid. Because the Subject Permit was issued in 2002, it was and is subject to the 1996 USBC, the version in effect at that time. Regarding suspensions of permits, Section 110.6 of the 1996 USBC provides:

“Any permit issued shall become invalid if work on the site authorized by the permit is not commenced within six months after issuance of the permit, or if the authorized work on the site is suspended or abandoned for a period of six months after the time of commencing the work; however, permits issued for building equipment such as plumbing, electrical and mechanical work shall not become invalid if the building permit is still in effect. It shall be the responsibility of the permit applicant to prove to the code official that work has not been

suspended or abandoned. Upon written request, the code official may grant one or more extensions of time, not to exceed one year per extension.”

In this case, the subject permit is invalid because the Appellants have yet to prove that work was not suspended or abandoned. Specifically, the Appellants have yet to provide sufficient proof to warrant any extension(s) at any point(s) if/when the work was discontinued for more than six months.

4. The Appellants Have No Approved Plans.

Regarding approved construction documents, Section 109.5.4 of the 1996 USBC provides: “The code official shall stamp "Approved" or provide an endorsement in writing on both sets of construction documents when approved. One set of such approved construction documents shall be retained by the code official. The other set shall be kept at the building site, open to inspection by the code official at all reasonable times.”

Despite this requirement, the Appellants apparently no longer have the approved construction documents, which are intended to guide not only inspections, but also construction. The Appellants are asking to rely on 20-year-old plans without knowing the contents of those plans. How can either the Building Official or the Appellants themselves know whether construction complies with missing documents? Though the Building Official has offered to expedite review of the Appellants’ 20-year-old plans, neither party can proceed in the absence of approved plans.

5. Conclusion

The Board should decline to hear this appeal because it was not timely filed within the 30-day appeal period. Even if the Board does hear this appeal, the Building Official correctly determined that the 20-year-old permit was and is invalid because the Appellants have yet to prove that work was not suspended or abandoned. Finally, even if the subject permit remains valid, the Appellants cannot rely on missing documents. On these three bases, this appeal should be dismissed and/or denied, and the Building Official’s determination affirmed by written decision.

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of North Park Street, L.C.
Appeal No. 98-10

Decided: July 17, 1998

DECISION OF THE REVIEW BOARD

PROCEDURAL BACKGROUND

1. North Park Street, L.C., a development firm in Fairfax County, through counsel, brings the appeal to the Review Board pursuant to the Virginia Uniform Statewide Building Code ("USBC").

2. By letter, Fairfax County USBC officials informed North Park of the revocation of their USBC building permit for Lot 7 in the North Park Subdivision.

3. North Park filed an appeal with the Fairfax County USBC appeals board. The Fairfax board heard the appeal and ruled to dismiss the appeal citing nonconformity with the USBC's time limit requirements for filing an appeal.

4. North Park then further appealed to the Review Board. The Review Board scheduled and conducted a preliminary hearing for consideration of the timeliness issue. North Park, through counsel, submitted written arguments but did not attend the hearing. Representatives of Fairfax County were present at the hearing.

FINDINGS OF THE REVIEW BOARD

1. As evidenced by the supplemental statement submitted by North Park, the building permit in question was issued on November 17, 1997. The current, or 1996, edition of the USBC was in effect at that time. Section 121.1, governing appeals, states in pertinent part: "[a]ppeals relating to construction shall be submitted within 30 days."

2. The letter from Fairfax rescinding the building permit was dated April 9, 1998. Fairfax testified the letter was hand delivered to North Park's counsel that day. As evidenced by North Park's response letter, Fairfax's letter was in fact received by North Park's counsel on April 9, 1998.

3. As further evidenced by the record, North Park filed an appeal of the revocation of the building permit by application to the Fairfax board dated May 19, 1998; received by Fairfax on May 20, 1998. The appeal was therefore submitted at 41 days, not within 30 days.

4. North Park argues in its supplemental statement that Fairfax revoked the building permit under § 109.7 of the 1993 edition of the USBC. The 1993 edition of the USBC allowed 90 days to file an appeal. North Park further argues if the 1993 edition of the USBC is not applicable, the revocation is void ab initio; conversely, if the 1993 edition of the USBC is applicable, North Park had 90 days to appeal.

5. Fairfax's response to North Park's argument is that

under the current (1996) edition of the USBC, § 102.2 authorizes a building permit applicant to use the previous (1993) edition of the USBC for construction aspects of a building when the permit application is submitted within one year after the new (1996) edition of the USBC becomes effective. Fairfax states North Park exercised this option. Fairfax further argues administrative actions, such as appeals, are governed by the USBC in effect at such time the action occurs. Therefore the 30 day time frame for an appeal applies.

6. Fairfax admits error in citing § 109.7 of the 1993 edition of the USBC in revoking the building permit, but contends since § 108.6 of the current (1996) edition of the USBC contains identical wording and authorization, the revocation remains valid.

7. The Review Board agrees with Fairfax County. Further, an interpretation of the Review Board addresses the issue in question. Interpretation No. 4/93 states as follows:

QUESTION #1: In appealing a decision of the building official, are the current appeals procedures used, or, if the building or structure was constructed under a previous edition of the code, are the appeals procedures under the previous edition used; and, how does this correlate with § 100.6?

ANSWER #1: The edition of the USBC in effect at the time the application for appeal is made is used for appeal procedures. Technical issues upon which the appeal is based are according to the model code enforced at the time of the building permit application.

8. The Review Board finds Fairfax's revocation of the building permit on April 9, 1998 to be an authorized action under

§ 108.6 of the 1996 edition of the USBC. The fact that Fairfax cited the incorrect section number does not make the action void. Further, North Park, under § 121.1 of the 1996 edition of the USBC, had 30 days to file an appeal and failed to do so. Therefore North Park's appeal is invalid.

FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the ruling of the Fairfax County USBC appeals board to be, and hereby is, upheld.

The appeal of North Park Street, L.C. is denied.



Chairman, State Technical Review Board

10.18.98
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 Norman R. Crumpton, Secretary of the State Building Code Technical Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.



COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4579
Phone (434) 296-5832

**ALBEMARLE COUNTY BOARD OF BUILDING CODE APPEALS
WEDNESDAY, OCTOBER 21, 2020 at 3:00 P.M.
MINUTES**

Board Members Present: Joseph Schinstock; Doug Lowe; Francis Caruccio; James Gibson; Fred Huckstep

Staff Present: Michael Dellinger, Building Official; Andrew Herrick, Deputy County Attorney; Todd Shifflett, Community Development Assistant II; Keith Bradshaw, Code Compliance Officer

Guest Present: Maynard Sipe, attorney for appellant

Note: Pursuant to and in compliance with Ordinance No. 20-A(14), An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster, this meeting was held by electronic communication means (namely: Microsoft Teams) because of the emergency created by the COVID-19 disaster.

1. Call to Order
The meeting was called to order by Building Official Michael Dellinger.
2. Establish a Quorum
With all five of the Board members in attendance, a quorum was established.
3. Election of Officers
The Board elected its officers:
 - On motion by Fred Huckstep, seconded by Joe Schinstock, Doug Lowe was unanimously elected Chair.
 - On motion by Francis Caruccio, seconded by Doug Lowe, Fred Huckstep was elected Vice-Chair by a vote of 4-0 (Mr. Huckstep abstaining).
4. Establish By-laws
The Board discussed the proposed By-laws prepared and presented by Mr. Herrick.
 - On motion by Joe Schinstock, seconded by Fred Huckstep, the Board unanimously approved the attached By-laws.
5. Review DHCD's Appeals Manual
Mr. Dellinger and Mr. Herrick reviewed DHCD's Appeals Manual with the Board and answered the Board's questions regarding the Manual.

6. Appeal Hearing: HS2019-026 Notice of Violation for 7 Rockbrook Drive
The Board heard the appeal of the Notice of Violation for 7 Rockbrook Drive. Mr. Dellinger and Mr. Herrick presented the Building Official's case for affirming the violation. Attorney Maynard Sipe presented the owner's case for reversing the violation. After Board discussion:
 - On motion by Joe Schinstock, seconded by Doug Lowe, the Board unanimously denied the appeal of the Notice of Violation, as reflected in the attached Order.

7. Adjournment
With no further business, the meeting was adjourned.

Albemarle County Board of Building Code Appeals
Bylaws

Article 1. Officers

- 1-1. The local board of appeals shall organize; and annually elect a chair and vice-chair and appoint a secretary at its first meeting of each calendar year.
- 1-2. The chair shall preside at meetings and hearings and shall decide points of order or procedure.
- 1-3. The vice-chair shall assume the duties of the chair in the chair's absence.
- 1-4. The secretary shall handle correspondence subject to these rules at the direction of the board; shall send out notices required by these rules; shall keep the minutes of the board's proceedings; and shall keep a file on each appeal which comes before the board.

Article 2. Meetings

- 2-1. Regular meetings of the local board of appeals for the hearing of cases shall be held on the third Wednesday of each month at a designated time, unless there are no pending appeals before the board.
- 2-2. Special meetings may be called by the chair, provided at least five (5) days written notice of such meeting is given each member.
- 2-3. A majority of the board shall constitute a quorum.
- 2-4. Business conducted at meetings of the board shall follow Roberts' Rules of Order or other parliamentary procedure.
- 2-5. The board may adjourn a meeting if all applications or appeals cannot be disposed of on the meeting day, and no further notice shall be necessary for a continuation of such meeting.

Article 3. Procedure for Hearing Appeals

- 3-1. Appeals to the local board of appeals shall be filed with the code official and any applicable fees paid. The code official shall transmit the appeal application form to the secretary of the board along with all papers constituting the record of action upon which the appeal is based.
- 3-2. The applicant shall provide the secretary with all information requested and any such additional information or evidence as may be reasonably required consideration of the matter.

3-3. An application for appeal filed accordingly to the above shall be assigned an appeal number within five (5) days. Applications for appeals will be heard in the order they are received.

3-4. The secretary of the board shall schedule the appeal, notify all interested parties of the hearing and give notice including the time, date and place of the meeting to anyone requesting such information.

3-5. The applicant may appear in his own behalf at the hearing or may be represented by legal counsel or an agent.

Both the applicant and the code official may speak to the appeal and any person whose interests are affected may speak for or against the issue. The applicant shall be given an opportunity for final rebuttal.

3-6. The final decision on any appeal to the local board of appeals shall be in the form of a written decision that matches the minutes and accurately conveys the verbal decision voted upon by the board.

3-7. The board shall notify the interested parties and the code official of the decision within seven (7) days after the signing of the written decision by the chair, and in any event, within fourteen (14) days after the meeting in which the decision is made and within sixty (60) days of the date on which the application for appeal was filed.

Article 4. Records

4-1. A complete file on each appeal shall be kept by the secretary as part of the records of the local board of appeals.

4-2. All records of the board shall be public records.

Adopted: October 21, 2020

Attest:



Chair



Secretary

Albemarle County Board of Building Code Appeals Decision

Appeal No. 2020-1

IN RE: Appeal of Official Notice of Violation for 7 Rockbrook Drive dated February 11, 2020.

The appeal is hereby DENIED, for the reasons set out below:

7 Rockbrook Drive (the Subject Property) has been permitted as a Residential Group R-5 structure, pursuant to Virginia Construction Code § 310.7. Notwithstanding its limited permit, the Subject Property has reportedly been used as a bed and breakfast or other transient boarding facility for more than 10 occupants.

Virginia Construction Code § 310.3, Exception 1 limits the use of the Subject Property as a bed and breakfast or other transient boarding facility to a maximum of 10 occupants. Because the proprietor (a limited liability company) does not occupy the Subject Property, Virginia Construction Code § 310.3, Exception 2 does not apply. As a result, to be used as a bed and breakfast or other transient boarding facility for more than 10 occupants, the Subject Property would require a permit as a Residential Group R-1 structure, pursuant to Virginia Construction Code § 310.3, which permit it currently lacks.

Date: October 21, 2020

Signature



Chair of Local Board of Appeals

Note: Any person who was a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to such board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, VA 23219, (804) 371-7150, or <https://www.dhcd.virginia.gov/sites/default/files/Docx/sbctrb/file-appeal/appeal-application-may-19.pdf>.