

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Bruce Henry
Appeal No. 25-02

DECISION OF THE REVIEW BOARD

I. Procedural Background

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

II. Case History

On April 20, 2024, the Frederick County Fire and Rescue Department (County), the agency responsible for the enforcement of the 2021 Virginia Statewide Fire Prevention Code (VSFPC), issued a summons to Bruce Henry (Henry) for an outside fire in the 300 block of Oates Road, in Frederick County, related to violations of several Frederick County codes.

Henry filed an appeal to the Frederick County Local Board of Appeals (local appeals board). The local appeals board denied the appeal finding that “...*they do not have jurisdiction over this case as it is in the court system.*” On February 3, 2025, Henry further appealed to the Review Board.

While initially processing the appeal application, Review Board staff found that the appeal application was related to a summons issued by the County and filed in Frederick County General District Court. No other decision by the County was submitted; therefore, in accordance with

Review Board Policy #9, Review Board staff prepared the case for a preliminary hearing as to whether the appeal is properly before the Board.

Appearing at the Review Board meeting for Henry was Bruce Henry. No one appeared at the Review Board meeting for Frederick County; however, Austin Cano, Acting County Attorney for the County, submitted, via email to the Board Secretary on April 17, 2025, an opening statement because he was unexpectedly required to be present in Frederick County Circuit Court at 8:30 a.m. on April 18, 2025; the date of the Review Board hearing. The Secretary presented the Vice-Chair, who served as Chair for the April 18, 2025 meeting, a copy of the email from Mr. Cano. The Vice-Chair accepted Mr. Cano's email as evidence (labeled Evidence 01) and read the email into the record of the appeal. Mr. Henry objected to the acceptance of the email as evidence and the email being read into the record of the appeal.

III. Findings of the Review Board

A. Whether the appeal is properly before the Board.

Henry argued that his inability to cross exam the County, the document labeled Evidence 01, was "against the constitution" and violated his due process rights. Mr. Henry further argued that document labeled Evidence 01 should be stricken from the record. Henry argued that the signature on the summons was not legible and therefore, "should be out." Henry also argued that Eric Rinker, Frederick County Fire Inspector, was not qualified to write a criminal summons based on his lack of qualifications and certifications. Henry further argued that he requested proof of Mr. Rinker's qualifications and certifications from the County which was denied. Lastly, Henry argued that he should not have been criminally charged rather should have been administratively charged.

The County argued, via document labeled Evidence 01, that Mr. Henry "has no right to an appeal, and this Board has no jurisdiction to hear this appeal, as the appealed cases were

instituted by criminal complaint and summons.” The County further argued that “as stated in Section 111.1.1(1) of the Virginia Statewide Fire Prevention Code, there is an exception to the usual appeals right when a “*summons is issued in lieu of a notice of violation,*” meaning that no such appeals right exists when a case is instituted by criminal summons.” Additionally, the County argued that “the record shows that the Frederick County Fire Marshal’s office sought out criminal complaints to a magistrate who, as a neutral judicial official, issued two criminal summonses for Mr. Henry related to alleged burning violations, as permitted under Section 111.5 of the Fire Prevention Code. At no point was Mr. Henry issued a notice of violation: the charges were solely instituted by criminal summons, and therefore, under the jurisdiction of the Frederick County Court system.” Lastly the County argued that “To that end, on September 13, 2024, Mr. Henry was found not guilty of the local charge in the record as the second summons with no listed case number, additionally, on April 11, 2025, Mr. Henry was found guilty in the Frederick County Circuit Court, by a jury, of the charge in the record as summons reading case number GC24-4506. As such, not only does this Board not have jurisdiction as the appealed cases were instituted by summons, not notice of violation, but the appeal is mooted, as both cases have already been adjudicated by the Frederick County Courts.”

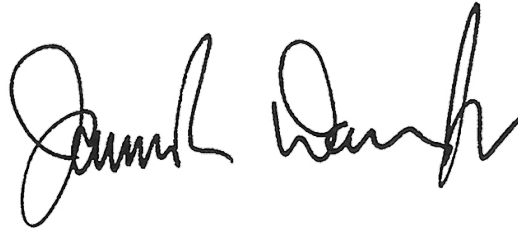
The Review Board found that in accordance with VSFPC Section 111.1.1 an appeal only applies to a Notice of Violation (NOV) issued by the local fire official and that exception one (1) of that code section allows a fire official to issue a summons in lieu of a NOV; therefore, the appeal should be dismissed as not properly before the Board.

IV. Conclusion

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders as follows:

A. Whether the appeal is properly before the Board.

The appeal is dismissed as not properly before the Board because in accordance with VSFPC Section 111.1.1 an appeal only applies to a Notice of Violation (NOV) issued by the local fire official and that exception one (1) of that code section allows a fire official to issue a summons in lieu of a NOV.



Chair, State Building Code Technical Review Board

Date entered _____ May 16, 2025 _____

As required by VCC 119.9: “As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty (30) days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with W. Travis Luter, Sr., Secretary of the Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.”

As required by Rule 2A:2(C): “Any party appealing from a regulation or case decision shall file with the agency secretary, within 30 days after adoption of the regulation or after service of the final order in the case decision, a notice of appeal signed by the appealing party or that party's counsel. With respect to appeal from a regulation, the date of adoption or readoption shall be the date of publication in the Register of Regulations. In the event that a case decision is required by § 2.2-4023 or by any other provision of law to be served by mail upon a party, 3 days

shall be added to the 30-day period for that party. Service under this Rule shall be sufficient if sent by registered or certified mail to the party's last address known to the agency.” See Rule 2A:2(A) of the Rules of the Supreme Court of Virginia.