



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell  
Attorney General

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900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

The Honorable William J. Howell  
Speaker, House of Delegates  
106 Carter Street  
Fredericksburg, Virginia 22405

Dear Mr. Speaker:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether a local building official's opinion regarding demolition of unsafe structures, acting under the authority of §§ 36-98 and 36-103, negates or supersedes a review board's<sup>1</sup> approval requirement for demolition of structures within an historic district established pursuant to § 15.2-2306.<sup>2</sup>

## Response

It is my opinion that a local building official's demolition authority regarding unsafe structures pursuant to §§ 36-98 and 36-103 supersedes and overrides the demolition authority of a review board pursuant to § 15.2-2306 in cases where a structure located in an historic district is unsafe or unfit for human occupancy.

## Background

You state that in early 2006, a local building maintenance official issued a notice of unsafe structure to an owner of an historic building located in an historic district governed by an ordinance established pursuant to § 15.2-2306 ("Ordinance"). You report that the notice stated the structure was

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<sup>1</sup>Section 15.2-2306(A)(1) authorizes localities to enact an ordinance to establish a review board, which may be charged with the preservation of historical sites and architectural areas. I note that a review board commonly is known and referred to as an "Architectural Review Board."

<sup>2</sup>You request that I interpret a specific local historic ordinance provision. This office historically has declined to render official opinions interpreting local ordinances. *See, e.g.*, 1976-1977 Op. Va. Att'y Gen. 17, 17-18. Further, in instances when a request requires an interpretation of a local ordinance, the Attorney General has declined to respond in order to avoid becoming involved in matters solely of local concern and over which the local governing body has control. *See* Op. Va. Att'y Gen.: 2004 at 68, 71 n.1; 2001 at 65, 71 n.11; 1995 at 240, 241; 1986-1987 at 347, 348. Accordingly, I limit my comments to the scope of authority of a review board regarding demolition provided in § 15.2-2306.

unsafe and in violation of the Virginia Uniform Statewide Building Code.<sup>3</sup> Further, the notice ordered the owner to follow the recommendations set forth in an inspection report or submit a plan to demolish and remove the structure within thirty days. The property owner elected to demolish the building. However, the locality refused to route an application for demolition to the review board established pursuant to the Ordinance.

### Applicable Law and Discussion

Section 36-98 directs and empowers the Board of Housing and Community Development to adopt and promulgate a Uniform Statewide Building Code<sup>4</sup> ("Building Code Regulations"). The primary purpose of the Building Code Regulations is "to ensure the protection of the public health, safety and welfare."<sup>5</sup> The term "building regulations" refers to laws and regulations of the state or ordinances of any locality "relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings."<sup>6</sup> As such, "building regulations" do not include "zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used."<sup>7</sup>

Section 36-103 authorizes the Board of Housing and Community Development to promulgate and adopt minimum building regulations for existing buildings as part of the Building Code Regulations. Pursuant to this statutory authority, the Board has adopted such regulations,<sup>8</sup> including one to provide for demolition of buildings deemed to be unsafe or unfit for human occupancy.<sup>9</sup> Section 36-105 directs localities to administer and enforce the Building Code Regulations. Further, § 36-105(A) requires each locality to designate a building department to administer and enforce the building code for new construction and to create "a local board of Building Code appeals."

A locality also may choose to enforce the building maintenance provisions of the Building Code Regulations.<sup>10</sup> If a locality chooses to enforce the maintenance provisions, "the local governing body shall designate the agency within the local government responsible for such enforcement and appoint a code official."<sup>11</sup> The code official must enforce the Regulations and issue all necessary notices.<sup>12</sup> Such official has discretionary authority to issue notices regarding violations of the maintenance provisions that do not involve unsafe buildings.<sup>13</sup> However, the official has a *mandatory* duty to inspect unsafe structures or those unfit for human habitation and to provide personal notice to the owner, his agent, or the person in

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<sup>3</sup> See VA. CODE ANN. §§ 36-97 to 36-119.1 (2005 & Supp. 2006).

<sup>4</sup> 13 VA. ADMIN. CODE §§ 5-63-10 to 5-63-550 (Supp. 2006).

<sup>5</sup> 13 VA. ADMIN. CODE § 5-63-460(A); see also §§ 36-99(A), 36-103 (2005) (providing that building code regulations are to ensure protection of public health, safety, and welfare).

<sup>6</sup> Section 36-97 (2005).

<sup>7</sup> *Id.*

<sup>8</sup> See *supra* note 4.

<sup>9</sup> See 13 VA. ADMIN. CODE § 5-63-490 (governing unsafe structures or structures unfit for human occupancy).

<sup>10</sup> See § 36-105(C) (2005).

<sup>11</sup> 13 VA. ADMIN. CODE § 5-63-480(F).

<sup>12</sup> 13 VA. ADMIN. CODE § 5-63-480(M).

<sup>13</sup> 13 VA. ADMIN. CODE § 5-63-480(T).

control.<sup>14</sup> Such notice must include the necessary corrective action, and in the case of a notice of demolition, the time period within which this action must occur.<sup>15</sup>

Section 36-98 provides that the Building Code Regulations shall supersede the building codes and regulations of localities. However, a 2001 amendment to § 36-98 provides:

*Such Code also shall supersede the provisions of local ordinances applicable to single family residential construction that (a) regulate dwelling foundations or crawl spaces, (b) require the use of specific building materials or finishes in construction, or (c) require minimum surface area or numbers of windows; however, such Code shall not supersede ... land use requirements in airport or highway overlay districts, or historic districts created pursuant to § 15.2-2306, or local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program. [Emphasis added.]<sup>16</sup>*

Relevant to your inquiry is the language providing that the Building Code Regulations shall not supersede land use requirements in historic districts created pursuant to § 15.2-2306. The 2001 amendment permits review boards to consider matters in the Building Code Regulations related to construction which are also related to determining historic significance and architectural compatibility of a structure.<sup>17</sup> Thus, the threshold question is whether the apparently conflicting language of § 36-98 and § 15.2-2306 may be harmonized. General rules of statutory construction require that statutes dealing with the same subject matter be read in harmony with one another.<sup>18</sup>

Section 15.2-2306(A)(1) authorizes a locality to adopt an Ordinance to set forth historic landmarks and historic buildings and structures and to establish a review board to administer the Ordinance. The Ordinance may charge the review board with the duty to implement the provisions of the Ordinance and may require approval from the board to demolish buildings regulated by the Ordinance.<sup>19</sup> Review boards have only two specifically designated functions: (1) to review and approve or disapprove proposed construction, reconstruction, alteration, or restoration of buildings or structures, including signs, within such district as being “architecturally compatible” with the historic landmarks, buildings, or structures in the historic district;<sup>20</sup> and (2) to review and approve or disapprove the proposed demolition or moving of an historic landmark, building, or structure within any such district.<sup>21</sup>

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<sup>14</sup> See 13 VA. ADMIN. CODE § 5-63-490(B), (E).

<sup>15</sup> 13 VA. ADMIN. CODE § 5-63-490(E).

<sup>16</sup> See 2001 Va. Acts ch. 525, at 588, 588 (amending § 36-98).

<sup>17</sup> See *Worley v. Town of Washington*, 65 Va. Cir. 14, 18-19 (2004) (interpreting § 15.1-503.2, predecessor to § 15.2-2306). In dicta, the court states that the 2001 amendment overrules a 1996 opinion of this Office. See *id.* at 22; see also 1996 Op. Va. Att’y Gen. 139. The 1996 opinion found that an architectural review board’s authority regarding approval or disapproval of proposed construction, alteration, and repair of a building in a historic district did not include the authority to dictate the types of materials but was limited to determining the compatibility of the character and style of the proposed renovations with existing landmarks and historic structures in the district. *Id.* at 141.

<sup>18</sup> 1973-1974 Op. Va. Att’y Gen. 478, 479.

<sup>19</sup> See VA. CODE ANN. § 15.2-2306(A)(1)-(2) (2003).

<sup>20</sup> See § 15.2-2306(A)(1).

<sup>21</sup> See § 15.2-2306(A)(2).

A plain reading of the language of § 15.2-2306 reveals that its purpose is to preserve and protect historic buildings and structures and areas of historic and architectural interest. The statute makes no mention of unsafe structures. Rules of statutory construction require that a reasonable construction should be given to a statute to promote the end for which it was enacted.<sup>22</sup> In applying such rule to the demolition authority of review boards established pursuant to § 15.2-2306, it is reasonable to conclude that such authority relates to the architectural and historical significance of a building and its compatibility with historic values; it does not relate to unsafe conditions.<sup>23</sup>

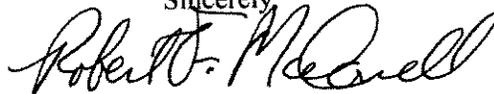
The general legislative intent of Chapter 22 of Title 15.2, which encompasses § 15.2-2306, is “to encourage localities to improve the public health, safety, convenience and welfare of its citizens.”<sup>24</sup> Likewise, the stated legislative intent of the Building Code Regulations is “to protect the health, safety and welfare of the residents of the Commonwealth.”<sup>25</sup> In order to harmonize § 15.2-2306 with §§ 36-98 and 36-103 and fulfill the legislative intent, it is necessary to recognize that public safety is a paramount task of government.<sup>26</sup> While the role of a review board regarding architectural and historical significance is important, it does not override considerations of public safety.<sup>27</sup>

### Conclusion

Accordingly, it is my opinion that a local building official’s demolition authority regarding unsafe structures pursuant to §§ 36-98 and 36-103 supersedes and overrides the demolition authority of a review board pursuant to § 15.2-2306 in cases where a structure located in an historic district is unsafe or unfit for human occupancy.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

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<sup>22</sup>See *Ambrogio v. Koontz*, 224 Va. 381, 389, 297 S.E.2d 660, 664 (1982); *Rich v. Commonwealth*, 198 Va. 445, 449, 94 S.E.2d 549, 552 (1956).

<sup>23</sup>This construction of § 15.2-2306 also comports with the framework of the Building Code Regulations with respect to unsafe structures, *i.e.*, the building code official’s duty to issue notices regarding unsafe structures is mandatory and if the structure is to be demolished, the notice must specify the time by which the demolition is to occur. See 13 VA. ADMIN. CODE § 5-63-490(B), (E).

<sup>24</sup>Section 15.2-2200 (2003).

<sup>25</sup>Section 36-99(A).

<sup>26</sup>See VA. CONST. art. I, § 3 (providing that “government is ... instituted for the common benefit, *protection, and security of the people*” (emphasis added)); *United States v. Perkins*, 363 F.3d 317, 326 (4th Cir. 2004) (noting that public safety is among most basic services of government to its citizens). Therefore, it is reasonable to conclude that the order of a local building officer related to the safety of a structure must supercede that of a review board under an Ordinance.

<sup>27</sup>Where possible, conflicting statutes are to be harmonized to give effect to both. See *Phipps v. Liddle*, 267 Va. 344, 346, 593 S.E.2d 193, 195 (2004). In this instance, we give effect to both recognizing that public safety is paramount, but once accomplished, architectural and historical values are also important.