Architectural review board determines whether character or style proposed for renovation of building or structure is architecturally compatible with historic landmarks, buildings or structures within historic district. Definition of "building regulations" in Building Code does not include board decisions regarding alteration and repair of existing buildings and structures, because board has no authority to dictate manner of construction or materials to be used in erection, alteration or repair of building or structure. No authority for review board to establish building regulations.

The Honorable L. Louise Lucas  
Member, Senate of Virginia

The Honorable William S. Moore Jr.  
Member, House of Delegates

June 17, 1996

You ask whether the definition of the term "building regulations" in § 3697 of the Code of Virginia includes decisions made by a local architectural review board ("review board") or a local downtown design committee ("design committee") regarding the alteration and repair of existing structures. You next ask whether a review board may establish "building regulations" as that term is defined in § 3697. If so, you ask whether the decisions made by the review board are superseded by the Uniform Statewide Building Code under the provisions of § 3698.

You relate that the City of Portsmouth requires a citizen seeking a building permit for renovation of historic structures in the downtown area to obtain approval of the renovation plans from the review board and/or the design committee before obtaining a building permit. You advise that a citizen who is dissatisfied with the decision of either the board or the committee may appeal the decision to the city council. A building permit for renovation of the structure, however, will not be issued until the citizen's renovation plans are approved.
Section 3698, a portion of the Uniform Statewide Building Code ("Building Code"), directs and empowers the Board of Housing and Community Development to "adopt and promulgate a Uniform Statewide Building Code," and expressly provides that "[s]uch building code shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies." Prior opinions of the Attorney General conclude that the Building Code supersedes all building and maintenance codes and regulations of counties, municipalities, political subdivisions and state agencies that have been or may be enacted or adopted. The dominant purpose of the Building Code is "to protect the health, safety and welfare of the residents of this Commonwealth." Another important purpose of the Building Code is to provide for "the safety of ultimate construction."

As used in the Building Code, the General Assembly has defined the term "building regulations" in § 3697 to mean any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure. [Emphasis added.]

Chapter 11 of Title 15.1 presents a connected system for local government planning, subdivision of land and zoning. Various statutes within Chapter 11 detail the creation, powers and responsibilities of the several bodies and officers charged with carrying out the local land use regulation process, including the local governing body, the planning commission, the zoning administrator, the board of zoning appeals, and a review board.

Section 15.1503.2 contains the only reference to review boards found in the Virginia Code. Under that section, such boards have only two specifically designated functions: (1) to review and certify that a proposed building or structure, including signs, is "architecturally compatible" with the historic landmarks,
buildings or structures in the district subject to the review
board's control; and (2) to review and approve or disapprove the
razing, demolition or moving of a historic landmark, building or
structure within a historic district.

A determination of architectural compatibility in a historic
district is a concern entirely independent from that of protection
of the health, safety and welfare of the residents of the
Commonwealth. Architectural compatibility of a building is
limited to its character and style—the aesthetics of the building or
structure. Actions taken by a review board under the provisions
of § 15.1503.2 are limited solely to determining the compatibility
of the character and style of a building or structure, and are
clearly within the scope of "zoning ordinances or other land use
controls that do not affect the manner of construction or materials
to be used in the erection, alteration or repair of a building or
structure."

The General Assembly has not provided review boards with any
statutory authority to dictate the types of materials or manner of
construction of a building or structure, which are solely under the
purview of the Building Code. The consideration by such boards
or design committees must, therefore, be only to determine
whether the unified, overall character or style proposed for
renovation of a building or structure is "compatible" with the
landmarks, buildings or structures within a historic district.

Accordingly, I am of the opinion that the definition of the term
"building regulations" in § 3697 does not include decisions made
by review boards and design committees regarding the alteration
and repair of existing buildings and structures. Furthermore,
since such boards and committees may not affect the manner of
construction or materials to be used in the erection, alteration or
repair of a building or structure, I am of the opinion that such
boards are not authorized to establish "building regulations" as
that term is defined in § 3697.

1Section 15.1503.2(A.1) permits any local governing body to
"adopt an ordinance setting forth the historic landmarks with the
county or municipality" and to "provide for a review board to
administer such ordinance." I can find no similar statutory
provision permitting the creation of a design committee.

2Sections 3697 to 36119.1.

Section 3699. The first paragraph of § 3699 provides, in part: "The Building Code shall prescribe building regulations to be complied with in the construction of buildings and structures, and the equipment therein as defined in § 3697, and shall prescribe regulations to insure that such regulations are properly maintained, and shall also prescribe procedures for the administration and enforcement of such regulations. The provisions thereof shall be such as to protect the health, safety and welfare of the residents of this Commonwealth, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation and barrier-free provisions for the physically handicapped and aged."


6Sections 15.1427 to 15.1503.4.

7See, e.g., § 15.1465 (governing body shall adopt subdivision ordinance); § 15.1486 (governing body may adopt zoning ordinance).

8See, e.g., §§ 15.1470 to 15.1472 (planning commission shall prepare and recommend subdivision ordinance and amendments thereto to governing body); § 15.1491(g) (planning commission may recommend amendments to zoning ordinance).

9Section 15.1491.3 (zoning administrator is vested with enforcement authority on behalf of local governing body).

10See, e.g., § 15.1494 (creation of board of zoning appeals); §§ 15.1-495 to 15.1496.1 (board of zoning appeals shall hear appeals of decisions of zoning administrator and applications for variances).

11Section 15.1503.2(A.1).

12Section 15.1503.2(A)(2).

13Section 3697 (defining "building regulations").
14Section 15.1503.2(A.1).

15Since I respond in the negative to your second question, it is unnecessary to respond to your third question regarding whether decisions by such local boards are superseded by the Building Code.