

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Woodbine ACE Hardware
Appeal No. 07-2

Hearing Date: May 18, 2007

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 the Virginia Statewide Fire Prevention Code (the "SFPC") and other regulations of the Department of Housing and Community Development. Enforcement of the SFPC in other than state-owned buildings is by local city, county or town fire prevention departments, when such localities choose to enforce the code. See § 27-98 of the Code of Virginia. An appeal under the SFPC is first heard by a local board of appeals and then may be further appealed to the Review Board. (Ibid.) The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

The owners of Woodbine ACE Hardware (referred to hereinafter as "ACE"), a hardware store located at 13418 Dumfries Road, appeal a decision of the Prince William County Fire Marshal's Office (the "fire official") that, under the SFPC, the storage of materials beneath the roof overhang on the front and side of the building must be protected by a sprinkler system. ACE first appealed the fire official's decision to the Prince William County Board of Fire Prevention Code Appeals (the "local SFPC board"), which upheld the fire official's decision, and then subsequently appealed to the Review Board.

In filings to the Review Board, the fire official raised the issue of whether ACE's appeal to the Review Board was untimely.

III. FINDINGS OF THE REVIEW BOARD

Whether ACE's appeal to the Review Board was untimely.

The provision of the SFPC governing the timeliness of appeals is set out in pertinent part below:

112.9. Appeal to the [Review Board]. After final determination by the [local SFPC board], any person who was a party to the local appeal may appeal to the [Review Board]. Application shall be made to the [Review Board] within 21 calendar days of receipt of the decision to be appealed.

The fire official argues that ACE's receipt of the decision of the local SFPC board occurred on the day the local SFPC board

heard the appeal, which was January 16, 2007, as ACE was present for the local SFPC board's deliberations and ruling. However, the fire official acknowledges that a written decision was sent to ACE by certified mail on that same day (January 16, 2007), but without a return receipt, so the fire official has no record of whether, or when, ACE received the written decision. ACE did correspond to the fire official by facsimile on February 6, 2007, requesting that the local SFPC board's decision be sent to them. The fire official then sent the written decision again to ACE on February 6, 2007. ACE appealed to the Review Board within 21 days of February 6, 2007,¹ but not within 21 days of January 16, 2007; therefore, the fire official's argument that ACE's appeal is not timely hinges on whether hearing the decision orally constitutes the "receipt" of the decision.

The Review Board finds that the common, ordinary meaning of the word "receipt" in the context used in the SFPC connotes the written transferal of a decision as opposed to an oral one. Further, as appeal proceedings are quasi-judicial proceedings, it is well established that decisions in such matters are conveyed via their written orders. Accordingly, there is no basis for the fire official's argument and it is rejected.

¹ While there is some discrepancy concerning whether ACE's application for appeal to the Review Board was properly faxed to and received by the Office of the Review Board within 21 days of February 6, 2007, the fire official did not argue that ACE's appeal was untimely for that reason and ACE did provide a fax transmittal sheet indicating that its application was faxed to the Office of the Review Board on February 23, 2007.

Whether to overturn the fire official's decision that the storage of materials beneath the roof overhang on the front and side of the building must be protected by a sprinkler system.

The fire official relies on § 315.3.1 of the International Fire Code, a nationally recognized model code incorporated by reference into the SFPC, as the basis for the citation against ACE. The provision is set out below:

315.3.1 Storage beneath overhead projections from buildings. Combustible materials stored or displayed outside of buildings that are protected by automatic sprinklers shall not be stored or displayed under nonsprinklered eaves, canopies or other projections or overhangs.

The parties stipulated that the roof overhangs in question are protected by an automatic sprinkler system. The issue is whether the automatic sprinkler system protection must extend below the roof overhangs to protect the storage under the overhangs. Clearly, based on the code section's plain meaning, § 315.3.1 of the SFPC does not require this, therefore, the Review Board finds that ACE is not in violation of § 315.3.1 of the SFPC.

This determination, however, should not be construed as a determination that the storage under the roof overhangs is not in violation of the SFPC, only that it is not in violation of § 315.3.1 of the SFPC. It is within the Review Board's authority to correct a citation under the SFPC and uphold a decision of a fire official that there is a violation of the SFPC concerning a

specific set of circumstances under appeal, even if the fire official cites an incorrect section of the SFPC.

In this case, whether the automatic sprinkler system is required to extend below the roof overhangs if storage is present under the overhang is not governed by the SFPC directly, but by the Virginia Uniform Statewide Building Code (the "USBC") in effect at the time the building was constructed.² Storage not associated with a building, on the other hand, is governed solely by the SFPC, as the USBC only regulates the construction of buildings and structures.

The SFPC, in §§ 102.7 and 102.8, sets out the statutory relationship between the USBC and the SFPC, which may be found in § 36-105.1 of the Code of Virginia. Essentially, these provisions dictate that the sole responsibility for the inspection and approval of buildings under construction is that of the local building department under the USBC. However, when the buildings are completed, the responsibility for fire safety protection passes to the fire official under the SFPC. This means that the fire official has the authority to assure that a building is being used in accordance with the way it was approved under the USBC.

² The initial USBC became effective in 1973. Buildings constructed prior to 1973 would be subject to local building regulations, or if a building was a public building, to local building regulations and the Virginia Fire Safety Regulations, also known as the Virginia Public Building Safety Regulations.

Therefore, if the USBC under which ACE's building was constructed did not permit storage under the roof overhangs without the automatic sprinkler system being extended under the roof overhangs to protect the storage, then ACE would not be permitted to have storage under the overhangs, and any storage placed there would be a violation of the SFPC for not using the building in accordance with the way it was approved under the USBC.

In this case, while evidence was presented by the fire official which indicated that the USBC under which the building was constructed did require the sprinkler system to extend below the roof overhangs to protect the storage, the evidence presented was not conclusive. No records from the local USBC department, no certificate of occupancy under the USBC or record of any modifications requested or approved and no original plans or specifications were presented to indicate whether storage was contemplated or approved under the roof overhangs based on the USBC requirements for sprinkler systems which were in effect at the time of construction.

Therefore, while the Review Board recognizes that storage may not be permissible under the roof overhangs without the sprinkler protection extending under the roof overhangs to protect the storage, the evidence is insufficient for the Review

Board to correct the citation by the fire official and to uphold the fire official's decision.

The Review Board notes that this decision does not prevent the fire official from re-evaluating the situation and presenting ACE with a new citation under the SFPC should the fire official determine that ACE is not using the building in accordance with the way it was approved under the USBC. ACE could then appeal the new citation if not in agreement with it.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the citation issued to ACE by the fire official and upheld by the local SFPC board to be, and hereby is, overturned.

The appeal is granted.

/s/*
Acting - Chairman, State Technical Review Board

Aug. 17, 2007
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 Vernon W. Hodge, 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.

***Note: The original signed final order is available from Review Board staff.**