

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Raymond M. Parker Sr.
Appeal No. 18-20

DECISION OF THE REVIEW BOARD

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).

Case History

On July 12, 2018, the Essex County Building Inspections Department (County), in enforcement of the 2012 Virginia Construction Code (VCC), performed a final inspection on one of the buildings on the property located at 531 LaGrange Industrial Drive, owned by David Stokes, and subsequently issued a certification of occupancy (CO).

Mr. Parker filed an appeal to the Essex County Local Board of Appeals (local appeals board) on August 10, 2018 for the issuance of the CO based on assertions that required permits were not issued, proper inspections were not performed, the well on his property was too close to the building being given the CO, and that "any pertinent laws or ordinances" in accordance with VCC Section 116.1 were not properly enforced by the County.

The local appeals board heard the case on October 16, 2018 and upheld the decision of the Essex County building official. Mr. Parker filed an application for appeal to the Review Board on December 5, 2018 after receipt of the local board's decision.

Review Board staff developed a staff summary of the appeal, distributed it, along with a copy of all documents submitted, to all the parties and scheduled an appeal hearing before the Review Board. The hearing before the Review Board was held on March 15, 2019. Appearing at the Review Board hearing for Essex County were Alwyn Davis, Building Official; David Stokes, owner of the property; and Chris Mackenzie, legal counsel for Essex County. Jeffrey L. Howeth, P.E. appeared at the hearing on behalf of Mr. Parker, who was properly notified; however, did not appear at the hearing.

Findings of the Review Board

A. Whether or not to dismiss Mr. Parker's appeal due to Mr. Parker not being an aggrieved party.¹

Essex County, through legal counsel, argued that Mr. Parker was not an aggrieved party because he does not own any property near the subject property of this appeal. The adjoining properties are owned by corporations partially owned by Mr. Parker. Essex further argued that Mr. Parker was not harmed in a way different from the public because of the issuance of the CO.

Mr. Howeth was unable to provide evidence or testimony related to the arguments presented by Essex County; however, the record of the appeal included written arguments from Mr. Parker. In Mr. Parker's written arguments he expressed his belief that he was aggrieved by the location of his well, which predated the industrial park, in proximity to potential sources of pollution, specifically primary and reserve drain field areas and an infiltration trench and sump which are installed within 100' of the well.

¹ See Review Board Case No. 17-6

The right to appeal is laid out by statute and by the building code. The Virginia Construction Code reads in part:

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 Construction Code clearly states that the right of appeal is for applications of the code and being aggrieved by those applications of the code. The Review Board consistently interpreted that the right to appeal is tied to applications of the code and the aggrievement by applications of the code.² In other words, without applications of the code or being aggrieved by applications of the code, there is no right to appeal.

With respect to the issue of whether to dismiss Mr. Parker's appeal due to his lack of standing as an aggrieved party, the Review Board finds that Virginia courts have provided guidance in determining whether a party is aggrieved. In Virginia Supreme Court cases, the court has held that to have standing, a person's rights have to be affected by the disposition of the case and that to be an aggrieved party, the party has direct interest in the subject matter and an immediate, pecuniary and substantial interest, and not a remote or indirect interest. In addition, the court has held that to be aggrieved, there is a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon a party different from that suffered by the public generally.

The Review Board finds that the appeal is not properly before the Board as it was not properly before the local appeals board because Mr. Parker is not aggrieved by the decision of the building official.

² *Id.*

Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the appeal to be, and hereby is, dismissed.



Chairman, State Building Code Technical Review Board

Date entered: ___May 17, 2019_____

Certification

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.