

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Leonard J. Ballback
Appeal No. 04-6

Decided: September 17, 2004

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 Uniform Statewide Building Code ("USBC") and other regulations of the Department of Housing and Community Development. See §§ 36-108 and 36-114 of the Code of Virginia. Enforcement of the USBC in other than state-owned buildings is by local city, county or town building departments. See § 36-105 of the Code of Virginia. An appeal under the USBC is first heard by a local board of building code appeals and then may be further appealed to the Review Board. See § 36-105 of the Code of Virginia. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

II. CASE HISTORY

Leonard J. Ballback ("Ballback"), the owner of residential property in the City of Virginia Beach at 760 Oriole Drive, appeals the determination of the City's chief USBC official (the "building official") to not approve a request to modify the application of the USBC provisions for construction adjacent to a lot line having to have a fire-resistive rating.

Ballback's property is deeded as two parcels; Parcel One and Parcel Two. Parcel One is on the eastern side of the property and is narrower than Parcel Two. The lot line which separates Parcel One and Parcel Two is roughly in a north-south direction and divides the two parcels into somewhat rectangular-shaped lots with the north-south dimension of each lot approximately twice as long as the east-west dimension.

Ballback's residence is located on Parcel Two; however, the driveway to the residence and a parking area extend onto Parcel One. A pump house serving the residence is also located on Parcel One. The western end of Ballback's residence is less than 20 feet from the lot line separating Parcel One and Parcel Two.

In late 2003 or early 2004, Ballback sought approval to construct an addition on the western end of his house. The addition was to extend over the lot line separating Parcel One

and Parcel Two by approximately 13 feet and was to contain a garage on a lower level and a kitchen, library, bath and laundry room on an upper level.

During the review of the proposed addition, Ballback was informed by the building official that the USBC required an exterior wall within three feet of a lot line to have a one hour fire-resistive rating and therefore the addition could not be approved without either vacating the lot line separating the two parcels or constructing a wall with a one-hour fire-resistive rating.

Ballback requested the building official to grant a variance to the fire-resistive rating requirement by letter dated April 26, 2004. The building official responded by letter dated May 7, 2004 considering the request as a request for a modification under the USBC and informing Ballback that the modification request would not be approved.

Ballback filed an appeal of the refusal to grant the modification to the City of Virginia Beach Board of Building Code Appeals ("City USBC board") by letter dated May 14, 2004. The City USBC board heard Ballback's appeal on June 8, 2004 and ruled to uphold the building official's decision.

Ballback then appealed the City USBC board's decision to the Review Board by application dated June 25, 2004. The Review Board heard Ballback's appeal on September 17, 2004. The

hearing was attended by Ballback and the building official and their respective legal counsel.

III. FINDINGS OF THE REVIEW BOARD

The USBC requirements for the construction of houses are contained in the International Residential Code ("IRC"), a nationally recognized model code incorporated by reference as part of the USBC in § 108.1.

Section R302 of the IRC, entitled "Location On Lot," contains requirements for the construction of houses relative to lot lines. While § R302 does not contain specific language prohibiting the construction of a house to extend across a lot line, the prohibition is implicit given the requirements of the IRC for exterior walls and projections, which are set out in pertinent part as follows:

"R302.1 Exterior walls. Exterior walls with a fire separation distance less than 3 feet (914 mm) shall have not less than a one hour fire-resistive rating with exposure from both sides. Projections shall not extend beyond the distance determined by the following two methods, whichever results in the lesser projections:

1. A point one-third the distance to the property line from an assumed vertical plane located where protected openings are required.
2. More than 12 inches (305 mm) into areas where openings are prohibited.

Projections extending into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The

above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

Exception: Tool and storage sheds, playhouses and similar structures exempted from permits by R105.2 are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line."

The International Code Council ("ICC") is the code writing group which promulgates the IRC. ICC also publishes a code commentary which is intended to assist code users in understanding and applying the code. The IRC commentary under the definition of "Lot" states as follows:

"A lot is a piece of property regulated as a single unit. The code regulates the construction of one or more buildings based on their location on a single lot. It is expected that owners can control what occurs on their own lots, with no control over any adjacent property. Therefore, several provisions are based upon the proximity of the building to the lot line."

In Ballback's case, the lot line in question is between Parcel One and Parcel Two. Both parcels are owned by Ballback. The obvious solution to permit Ballback's addition to cross the lot line is to vacate the lot line and combine the parcels into one lot. The USBC compliance issue would then become moot. However, as outlined by Ballback at the hearing, the parcels are existing nonconforming lots under City's Zoning Ordinance, so to vacate the lot line between Parcel One and Parcel Two would result in the loss of Parcel One as a legally platted lot which

could be sold or built upon at a later date. Ballback also outlined complications with other options considered due to the parcels being subject to the Chesapeake Bay Preservation Area Ordinance.

The issue in this appeal is therefore whether Ballback should be granted a modification under the USBC to permit the construction of the addition across the lot line between Parcel One and Parcel Two.

The modification provision in the USBC states as follows:

"109.2 Modifications. Upon application by the owner or the owner's agent, the building official may grant modification to any of the provisions of the USBC, provided the spirit and intent of the USBC are observed and public health, welfare and safety are assured."

The USBC modification provision is authorized under § 36-99 of the Code of Virginia which states in pertinent part as follows:

"The [USBC] shall prescribe building regulations to be complied with in the construction of buildings and structures ... and shall also prescribe procedures to be used by the local building department in the evaluation and granting of modifications for any provision of the [USBC], provided the spirit and functional intent of the [USBC] are observed and public health, welfare and safety are assured."

The functional intent of the USBC as applied in this case is to ensure that a house constructed on Parcel Two of Ballback's property does not endanger a house constructed on Parcel One, and vice versa. Therefore, if there are adequate

controls which prevent a house from being constructed on Parcel One, then the functional intent of the USBC would be met and the modification permitted to be granted.

As Ballback testified and the evidence indicates, many controls are already in place to prevent a house from being constructed on Parcel One. The first of which is that Ballback is the current owner of both parcels. Secondly, Ballback testified that the City's Zoning Ordinance would require the removal of the addition to his house prior to a house being constructed on Parcel One. In addition, any improvements to Parcel One would have to be approved by the City's Chesapeake Bay Preservation Area Board, the City's zoning department and the City's USBC department, all of which would be in the position to note that there was an addition to the house on Parcel Two extending over the lot line between Parcel One and Parcel Two.

A further control is the nature of the modification approval process. The granting of a modification is based on specific circumstances, and under § 109.2.2 of the USBC, approved modifications are required to be kept in the permanent records of the local USBC department as long the involved structure exists. So, inherent in the granting of the modification is the fact that it is contingent upon there not being a house on Parcel One creating an unsafe condition.

Therefore, should the circumstances change, the modification approval could be withdrawn.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decisions of the building official and the City USBC board to be, and hereby are, overturned and orders Ballback's modification request to be approved.

The appeal is granted.

/s/*
Chairman, Pro Tem, State Technical Review Board

11-19-2004

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.**