

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Fairfax County Building Department
Appeal No. 07-9

Hearing Date: November 16, 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 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

Mark and Jennifer Van de Meulebroecke (the "Van de Meulebroeckes"), owners of an existing residence located at 7228 Pinewood Street, in Falls Church, Virginia, submitted a USBC building permit application to construct an addition to their residence to the Fairfax County USBC department ("County USBC department").

The County USBC department, by written correspondence, notified the Van de Meulebroeckes that the application could not be approved as submitted due to a County law requiring existing residences to meet USBC requirements for a new residence when an addition is added that exceeds one hundred percent of the size of the existing residence.

The Van de Meulebroeckes appealed to the County of Fairfax USBC appeals board and, after hearing, the County of Fairfax USBC appeals board overturned the County USBC department's decision holding that the County law was invalid since it was in conflict with the USBC.

The County USBC department appealed the County of Fairfax USBC appeals board's decision to the Review Board. A hearing was held before the Review Board with all parties present and given opportunity to present evidence, testimony and arguments.

III. FINDINGS OF THE REVIEW BOARD

The County USBC department argues that the definition of an addition in the USBC is a "non-definition" in that it does not address whether an addition may be larger than the building to which it is added. The County USBC department then relies upon the dictionary definition of the term "addition" which indicates that it is an annex to a larger or more significant structure.

The Review Board disagrees. The term "addition" is defined in § 202 of the USBC as "An extension or increase in floor area or height of a building or structure." The plain meaning of the term would clearly include additions which are both smaller and larger than the building to which they are added.

Moreover, the USBC does contain parameters controlling the construction of additions which can limit the size of an addition. Section 103.4 of the USBC states in pertinent part:

"Additions to buildings and structures shall comply with the requirements of this code for new construction and an existing building or structure plus additions shall comply with the height and area provisions of Chapter 5. Further, this code shall not require changes to the design or construction of any portions of the building or structure not altered or affected by an addition, unless the addition has the effect of lowering the current level of safety."

Chapter 5 of the USBC is only applicable to commercial buildings, not residences. There is no size limitation for a residence under the USBC; only a height requirement of three

stories or less when designing under the International Residential Code, as in this case. Therefore, since there is no size limit for a new residence, there would be no logical reason to limit the size of an addition to a residence. Hence, the USBC definition of the term "addition" comports with the requirements for additions in § 103.4.

The County USBC department's reason for the disapproval of the Van de Meulebroeckes' application for a building permit is stated in its letter dated June 27, 2007 as "the size of the proposed addition exceeds the threshold established by the Definition of Addition contained in the Code of the County 61-1-2 to qualify for processing as an addition."

The County Code provision cited states in pertinent part:

"Addition shall include any new construction to an existing principal residential structure that neither exceeds 100% of the existing gross floor area of the above grade finished area nor includes the demolition of more than 50% of the existing above grade finished area as defined by the ANSI Z765-2003 standard. The ANSI Standard defines "Above Grade Finished Areas" as "[T]he sum of finished areas that are entirely above grade," excluding any finished area that is either wholly or partially below grade. Unless otherwise prohibited by the Virginia Uniform Statewide Building Code, construction that exceeds either of these parameters shall be deemed construction of a new house, and the entire structure shall be subject to all applicable codes and ordinances required for a new house, including utilities, and shall require the issuance of a new Residential Use Permit prior to occupancy."

The Review Board has consistently ruled in past cases¹ that § 110.1 of the USBC precludes the issuance of a building permit where the application for a permit does not comply with all pertinent laws and ordinances. In those past cases, however, the laws and ordinances involved were either zoning laws or ordinances or other laws or ordinances of a locality for which the responsibility lay with a separate department of the local government, other than the USBC department. Naturally, in those cases, a challenge of the local requirement was through a different venue than the appeals process under the USBC and the Review Board held that until that local requirement was overturned through the proper venue, USBC § 110.1 precluded the issuance of a building permit.

The case at hand is different for two reasons. First, it is the County USBC department which apparently has the responsibility for enforcing this County Code provision. Secondly, the County Code provision specifically references the USBC in determining whether it is applicable.

Therefore, the Review Board finds that the determination of whether there is or isn't compliance with the County Code provision as it relates to the USBC is within its authority to consider.

¹ See Review Board Appeal Nos. 98-9, 99-1, 99-12, 01-1 and 04-2.

The County Code provision specifically states, "Unless otherwise prohibited by the [USBC], construction that exceeds either of these parameters shall be deemed construction of a new house" Since the definition of an addition in the USBC includes an addition of any size and the USBC sets out special rules for additions which are different than the rules for new construction, the USBC does prohibit deeming an addition to be new construction under any circumstances. Accordingly, under the explicit language of the County Code provision, it cannot be applied; and the County USBC department's decision based on the County Code provision cannot be upheld.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the Fairfax County USBC appeals board, to be, and hereby is, upheld, but on different grounds as set out in § III of this Decision.

The appeal is denied.

/s/*

Chairman, State Technical Review Board

1-25-08

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.**