

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Deborah Caldwell-Bono and Benny Bono  
Appeal No. 17-6

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

Deborah Caldwell-Bono and Benny Bono (Bonos) appeal to the Review Board from a decision of the County of Roanoke Building Code Board of Adjustments and Appeals (County appeals board), which upheld a determination of the County of Roanoke building commissioner that a building on property adjacent to property where the Bonos live and across a public road from an equestrian center operated by the Bonos was a farm building and not subject to the Virginia Uniform Statewide Building Code (state building code) due to a statutory exemption for farm buildings under the laws governing the state building code. The building in question is located at 5198 Blacksburg Road and owned by Kimberly Bolden and her mother. In addition to housing farm equipment and supplies, portions of the building are used for wedding events and were alleged by the Bonos to be used for a time as a residence by Ms. Bolden's son.

In the proceedings before the County appeals board, the building commissioner, through legal counsel, raised two jurisdictional issues; whether the Bonos had a right to appeal and whether they filed a timely appeal. The issue of the Bonos' right of appeal was questioned based on the statutory provision governing appeals under the state building code and requiring an appealing party to be aggrieved by the decision being appealed.

The County appeals board considered both jurisdictional issues and ruled that the Bonos were aggrieved and that the appeal was timely filed. In the appeal to the Review Board, the Bonos asserted that the building commissioner was barred from raising those jurisdictional issues since the building commissioner did not appeal the decision of the County appeals board to the Review Board.

A hearing was held before the Review Board with the Bonos and building commissioner and their respective legal counsel present. Ms. Bolden was present but did not participate in the proceedings.

The Review Board limited its proceedings to only consideration of whether the building commissioner was barred from raising the jurisdictional issues heard by the County appeals board and whether the Bonos were aggrieved as required by the statute governing appeals under the state building code.

#### Findings of the Review Board

Relative to the issue of the right of the building commissioner to raise jurisdictional issues in the appeal to the Review Board irrespective of whether the building commissioner further appealed the County appeal board's decision on those issues; proceedings before the Review Board are de novo (see § 36-115 of the Code of Virginia). The building commissioner

appeal the County appeal board's decision to preserve the right to raise the jurisdictional issues in the Bonos' appeal to the Review Board.

With respect to the issue of whether to dismiss the Bonos appeal due to their 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 Bonos' concerns are predominately related to noise and activity associated with the zoning approval obtained by Ms. Bolden from the County of Roanoke for wedding events. The Bonos have challenged the County's zoning approval in a separate action and the matter is pending in the courts. The decision of the building commissioner that the building is a farm building has no bearing on those issues; they may continue to the extent that the County's zoning approval stands irrespective of whether the building is exempt or subject to the state building code.

The remaining issue raised by the Bonos is a claim that the building in question is unsafe based on their engagement of an architect to contact the building commissioner with his concerns. The farm building on the adjacent property in question is more than fifty feet (50') from the Bono's property line. Additionally, the Bonos have no existing structures in proximity to the property line. Therefore, while it is true that there are no standards for farm buildings due to the statutory exemption from the state building code, the issue of safety is more applicable to building occupants

than to the Bonos. Consequently, that issue does not make the Bonos aggrieved by the building commissioner's decision.

Final Order

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the County appeals board to be, and hereby is, vacated, and the Bonos' appeal to the Review Board to be, and hereby is, dismissed for lack of standing since the Bonos are not an aggrieved party as required by the statute governing appeals under the state building code.



Chairman pro tem, State Building Code Technical Review Board

Date entered: 1/25/18

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 Hodge, Acting 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.