

STATE BUILDING CODE TECHNICAL REVIEW BOARD

MEETING
August 20, 2010

GLEN ALLEN, VIRGINIA

Members Present

Mr. J. Robert Allen, Chairman
Mr. R. Schaefer Oglesby, Vice-Chairman
Mr. Matthew Arnold
Mr. W. Keith Brower, Jr.
Mr. J. Daniel Crigler
Mr. James R. Dawson
Mr. John H. Epperson
Mr. Joseph A. Kessler, III
Mr. John A. Knepper, Jr.
Mr. James N. Lowe
Mr. Eric Mays
Ms. Joanne D. Monday
Ms. Patricia S. O'Bannon

Member Absent

Mr. John W. Ainslie, Jr. (Resigned)

Call to Order

The meeting of the State Building Code Technical Review Board ("Review Board") was called to order by the Chairman at approximately 10:00 a.m.

Roll Call

The attendance was established by Mr. Vernon W. Hodge, Secretary, and constituted a quorum. Mr. Steven Jack, Assistant Attorney General of the State Office of the Attorney General, and the Board's legal counsel, was also present.

Mr. Hodge advised Review Board members that Mr. Ainslie had been appointed to the Virginia Board of Housing and Community Development and was therefore resigning from the Review Board. Mr. Hodge showed Review Board members a certificate of appreciation which would be sent to Mr. Ainslie to memorialize his tenure on the Review Board and a letter thanking him for his service. Mr. Hodge and Review Board members noted that his knowledge and expertise would be missed.

Approval of Minutes

Mr. Oglesby moved to approve the minutes of the June 18, 2010 meeting as presented in the Review Board members' agenda package with an editorial correction on page six identified by Ms. O'Bannon. The motion was seconded by Mr. Crigler and passed unanimously with Mr. Knepper abstaining from the vote.

Final Orders

Appeal of Leonard Harris; Appeal No. 09-16 (Interim Order):

After consideration, Mr. Oglesby moved to approve the interim order as presented in the Review Board members' agenda package. The motion was seconded by Mr. Crigler and passed unanimously with Mr. Knepper abstaining from the vote.

Appeal of Aaron Harcrow; Appeal No. 08-7:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Ms. O'Bannon and passed unanimously with Mr. Knepper abstaining from the vote.

Appeal of Ephesus Baptist Church; Appeal No. 10-1:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. After discussion, Mr. Oglesby amended the motion to approve the final order with the last two paragraphs in the "Findings of the Review Board" section stricken. The amended motion was seconded by Ms. O'Bannon and passed with Mr. Epperson voting in opposition and Mr. Knepper abstaining from the vote.

Appeal of Richard N. Clayton; Appeal No. 10-2:

After consideration, Mr. Oglesby moved to approve the final order as presented in the Review Board members' agenda package. The motion was seconded by Ms. Monday and passed unanimously with Mr. Knepper abstaining from the vote.

Mr. Lowe arrived at approximately 10:15 a.m.

New Business

Appeal of Dark Star Investment Company; Appeal No. 07-7:

Mr. Hodge informed Review Board members that a settlement agreement between the parties had been received. Copies were distributed to the Board members.

New Business

Appeal of Dark Star Investment Company; Appeal No. 07-7
(continued):

Mr. Brower arrived at approximately 10:20 a.m.

After discussion concerning the settlement agreement, Mr. Mays moved that the Board not endorse the settlement agreement as a final order as it drew conclusions which could only be determined through a hearing; however, that the settlement agreement, taken as an agreement between the parties, was sufficient to dispense with the issues in the appeal, therefore the appeal was to be dismissed with the settlement agreement to be referenced in the final order. The motion was seconded by Mr. Knepper and passed unanimously.

Appeal of James O. McGhee, Architects, P.C.; Appeal No. 10-7:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned whether there was compliance with the Uniform Statewide Building Code (USBC) with respect to openings in the exterior wall of a parking garage in a condominium building located at 915 Caroline Street, in Fredericksburg.

The following persons were sworn in and given the opportunity to present testimony:

James O. McGhee
Jules L. Elliott, witness for McGhee
Steve Smallwood, for the City of Fredericksburg
Jeffrey A. Bragg, for the City of Fredericksburg
Joe Wilson, owner of the building

During the testimony, the following exhibit was submitted by McGhee without objection:

Exhibit A – Drawing of exterior wall showing property line

New Business

Appeal of James O. McGhee, Architects, P.C.; Appeal No. 10-7
(continued):

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of James O. McGhee, Architects, P.C.; Appeal No. 10-7:

After deliberation, Mr. Arnold moved to overturn the decisions of the City of Fredericksburg building official and USBC appeals board and hold that the construction in question complies with the USBC. After discussion, Mr. Epperson offered an amendment to the motion that under the alternative methods or materials provision of the USBC, the method of construction used is at least equivalent of that prescribed by the USBC. The amended motion was seconded by Mr. Lowe and a vote was taken. The motion passed with Messrs. Brower, Crigler, Dawson and Kessler voting in opposition.

Appeal of John Catlett, Alexandria Building Official; Appeal No. 10-6 (continued from June 18, 2010 meeting):

A hearing reconvened with the Chairman serving as the presiding officer.

The following persons were sworn in and given the opportunity to present testimony:

John Catlett, for the City of Alexandria
Mark Holmes, homeowner
Marianne Bizek, homeowner
Craig Wallace, witness for the homeowners
Sloan Culver, for Culver Design Build

New Business

Appeal of John Catlett, Alexandria Building Official; Appeal No. 10-6 (continued):

Also present was:

Mary O'Connell, Esq., counsel for the City of Alexandria

No exhibits were submitted by the parties to supplement the documents in the Review Board members' agenda package.

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

Decision: Appeal of John Catlett, Alexandria Building Official; Appeal No. 10-6:

After deliberation, Mr. Lowe moved to uphold the decision of the City of Alexandria USBC appeals board in whole. The motion was seconded by Mr. Oglesby and a vote was taken. The motion failed with a vote of five "yeas" and six "nays." After further deliberation, Mr. Crigler moved to uphold the City of Alexandria USBC appeals board with respect to the second and third parts of its decision. The motion was seconded by Mr. Epperson and passed with Mr. Arnold voting in opposition. Mr. Kessler then moved to overturn the City of Alexandria USBC appeals board with respect to the first part of its decision. The motion was seconded by Ms. O'Bannon and passed unanimously.

Appeal of Richard Chiu; Appeal No. 08-4:

Mr. Arnold recused himself from this matter and the subsequent case involving Mr. Chiu (Appeal No. 09-4) stating that he served on the local USBC appeals board which heard the cases.

New Business

Appeal of Richard Chiu; Appeal No. 08-4 (continued):

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned an existing house owned by Mr. Chiu, located at 3412 Arnold Lane, in Falls Church, and the issuance of notices under Part III of the USBC (the Virginia Maintenance Code), by the County of Fairfax Department of Planning and Zoning.

The following persons were sworn in and given the opportunity to present testimony:

Richard Chiu
Michael Congleton, for Fairfax County
Victoria Dzierzek, for Fairfax County

Also present was:

Marc Gori, Esq., counsel for the County of Fairfax

During testimony, Mr. Chiu requested that the appeal being continued due to his ongoing efforts to achieve compliance with the USBC. After consideration by the Board members, Mr. Oglesby moved to move ahead with the hearing. The motion was seconded by Mr. Epperson and passed unanimously.

During further testimony, the following exhibit was submitted by Fairfax County:

Exhibit A – Pictures of the property in question

Ms. O'Bannon left the meeting at approximately 2:15 p.m.

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

New Business

Decision: Appeal of Richard Chiu; Appeal No. 08-4:

After deliberation, Mr. Oglesby moved to uphold the decisions of the Fairfax County USBC official and USBC appeals board. The motion was seconded by Mr. Brower. After further deliberation, Mr. Oglesby amended the motion to specify that the thirty (30) days for correction of the violations or demolition of the structures was to run from the date of entry of the final order. Mr. Brower seconded the amended motion and it passed unanimously.

Appeal of Richard Chiu; Appeal No. 09-4:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned the construction of an addition to a house owned by Mr. Chiu and located at 7101 Vellex Lane, in Annandale, and the issuance of legal notices under Part I of the USBC (the Virginia Construction Code) by the County of Fairfax USBC department.

The following persons were sworn in and given the opportunity to present testimony:

Richard Chiu
Melissa Smarr, for Fairfax County
Scott Hagerty, for Fairfax County

Also present was:

Marc Gori, Esq., counsel for the County of Fairfax

During testimony, the following exhibit was submitted by Fairfax County:

Exhibit A -- Pictures of the property in question

After testimony concluded, the Chairman closed the hearing and stated a decision from the Review Board would be forthcoming and the deliberations would be conducted in open session. It was further noted that a final order reflecting the decision would be considered at a subsequent meeting and, when approved, would be distributed to the parties and would contain a statement of further right of appeal.

New Business

Decision: appeal of Richard Chiu; Appeal No. 09-4:

After deliberation, Mr. Mays moved to uphold the decisions of the Fairfax County USBC official and USBC appeals board with the timeframe for correction of the USBC violations or demolition of the addition to run from the date of entry of the final order. The motion was seconded by Mr. Crigler and passed unanimously.

Secretary's Report

Mr. Emory Rodgers, Deputy Director of the Division of Building and Fire Regulation, of the Department, briefed the Review Board members on current activities of the Department, the development of the 2009 editions of the Division's building and fire regulations and other matters of interest.

Adjournment

The meeting was adjourned by motion of Mr. Mays at approximately 3:45 pm

Approved: October 15, 2010

/S/

Chairman, State Building Code Technical Review Board

/S/

Secretary, State Building Code Technical Review Board