

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Richard Chiu
Appeal No. 09-4

Hearing Date: August 20, 2010

DECISION OF THE REVIEW BOARD

I. PROCEDURAL BACKGROUND

The State Building Code Technical Review Board (the "Review Board") is a Governor-appointed board established to rule on disputes arising from application of the Virginia Uniform Statewide Building Code (the "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

Richard Chiu ("Chiu"), owner of a vacant house (the "house") located at 7101 Vellex Lane, in Annandale, appeals the issuance of several USBC notices of violation by the County of Fairfax Department of Public Works and Environmental Services (the "building official").

In December of 2007, the Fairfax County Department of Planning and Zoning cited Chiu for violations of Part III of the USBC, known as the Virginia Maintenance Code, determining that the house was unsafe.

Chiu appealed the citations to the County of Fairfax Board of Building Code Appeals ("County USBC board"), which after hearing, upheld the citations. Chiu further appealed to the Review Board and the appeal was designated as Appeal No. 08-3.

Review Board staff conducted an informal fact-finding conference pursuant to Appeal No. 08-3, attended by Chiu and representatives of Fairfax County. At the informal fact-finding conference, Review Board staff raised the issue of whether Part III of the USBC was applicable to the situation, as the citations issued by the County were relative to a large, partially constructed addition to the house, and not to the original house itself and Part I of the USBC, known as the Virginia Construction Code, rather than Part III of the USBC, regulates the construction of additions to buildings.

The County agreed to rescind the USBC violations which had been issued under Part III of the USBC and turn the situation over to the building official for the regulation of the construction of the addition. Chiu then subsequently withdrew his appeal to the Review Board (Appeal No. 08-3).

In September of 2008, the building official issued corrective work orders under Part I of the USBC for the lack of a building permit for the addition, for the problems with the construction of the addition and for the lack of inspections for the addition.

Chiu appealed the corrective work orders to the County USBC board in December of 2008. Prior to the County USBC board hearing Chiu's appeal, the building official issued formal notices of violation to replace the corrective work orders. The County USBC board conducted a hearing and upheld the notices of violation by an order signed in February of 2009. Chiu then further appealed to the Review Board, which is the current appeal (Appeal No. 09-4).

Review Board staff compiled the record and drafted a summary of the appeal for the parties review and opportunity was given for the submittal of additional documents, objections, corrections or additions to the staff summary and the submittal of written arguments. The appeal hearing before the Review Board

was then scheduled and conducted and was attended by both Chiu and the building official.

III. FINDINGS OF THE REVIEW BOARD

Chiu first argues that the issuance of the new notices of violation under Part I of the USBC are invalid as they subject him to double jeopardy. The Review Board finds no basis for this argument or that there is any prohibition for a locality to voluntarily rescind an enforcement action when discovering it to be in error and instituting an appropriate enforcement action to replace it.

Chiu also argues that as a civil engineer, licensed in the State of California, he is able to evaluate the construction of the addition and determine whether the construction is adequate. Chiu did not argue that he had obtained an active USBC permit for the project or that he had called for the proper inspections during construction.

The Review Board finds the evidence submitted to indicate that construction of the addition does not meet prescriptive standards of the USBC with respect to footing, foundation, framing, wall and roof requirements. Chiu did not submit any calculations, test results, or substantiation that the construction complies with the USBC. Additionally, there is substantial deterioration from prolonged exposure to the elements

