

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Richard L. Dixon, Jr.
Appeal No. 07-3

Hearing Date: April 17, 2009

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

Richard L. Dixon, Jr. ("Dixon") purchased a house at 112 Colony Way in Westmoreland County in August of 2004. The house

was an owner/built home constructed by James T. (Thomas) Bailey ("Bailey"), who began construction in 1998 and lived in the house while finishing it. The USBC certificate of occupancy was issued in 2004.

Dixon had a home inspection performed prior to the purchase of the house which noted problems with the construction of the home and Dixon engaged a structural engineer after the purchase of the home who also noted problems.

Dixon contacted the Westmoreland County USBC official ("building official") in 2005. The building official had an inspection performed by a building consultant on contract with the County and later met with Dixon and Bailey on site. Dixon later requested the building official to cite USBC violations for the identified problems; however, the building official informed Dixon by letter that no USBC violations were present.

Dixon filed an appeal with the Westmoreland County Board of Building Code Appeals ("County USBC board") in early 2007 and the County USBC board heard his appeal in May of 2007 and ruled to deny Dixon's appeal.

Dixon further appealed to the Review Board.

Review Board staff conducted an informal fact-finding conference pursuant to Dixon's appeal to the Review Board in August of 2007, attended by Dixon, the building official and legal counsel for Bailey. At the conference, Dixon and the

building official agreed that if Dixon would submit a more specific list of the alleged violations identifying the aspects of construction that he believed were in violation of the USBC, then the building official would address each issue.

The subsequent correspondence between Dixon and the building official resulted in a number of USBC violations being cited to Bailey and narrowed the scope of Dixon's appeal. Dixon filed a second appeal to the County USBC board concerning the building official's decision not to cite several additional issues, however, the building official informed Dixon that he believed they fell within the scope of the first appeal and refunded Dixon's fee for the second appeal.

Dixon then requested the Review Board to address all remaining issues.

III. FINDINGS OF THE REVIEW BOARD

Whether USBC violations are present relative to the lack of adequate glazing in the master bedroom.

Dixon acknowledged in the hearing that glazing is not required where a mechanical ventilation system is provided and that since his house had a mechanical ventilation system, Dixon withdrew his appeal of this issue. However, Dixon instead asserted that the windows did not meet the USBC standards for emergency escape stating that the tilt-out feature would have to be used to achieve an adequate opening. While Dixon was informed by several Board members that the USBC permitted the

use of tilt-out windows to achieve the opening dimensions required by the USBC, the Review Board finds that this was a new issue and not part of Dixon's appeal; therefore, Dixon's appeal concerning this issue is dismissed.

Whether USBC violations are present relative to the size of the second floor office.

It was determined that the second floor office does not meet the USBC criteria for a habitable room and therefore may not be used for that purpose; however, no USBC violations are present for its use as a non-habitable room, such as for storage; therefore, no USBC violation that could be cited against Bailey is present. Instead, the Review Board finds that the dispute is contractual concerning whether Bailey proffered that the room could be used as an office; therefore, Dixon's appeal concerning this issue is dismissed.

Whether USBC violations are present relative to the design and construction of the foundation, including drainage.

Evidence was presented in an engineering report and other documentation that the size of the concrete masonry units are inadequate given the depth of the unbalanced fill; the foundation was not properly waterproofed; no drain tile was installed and the grading around the house did not have the proper fall. Therefore, the Review Board overturns the decisions of the building official and County USBC board that no violations exist and finds that the foundation and grading is in

violation of §§ 401.2, 401.3, 404, 405 and 406 of the USBC¹ as outlined in the engineering report and other documentation and Bailey is to be cited for the corresponding USBC violations.

Whether USBC violations are present relative to the installation of the windows.

Evidence was presented that the windows installed in Dixon's house were designed as replacement windows, not as windows for new construction. No manufacturer's installation instructions were provided. Further evidence indicated that the windows did not have the required flashing and weather sealing required by the USBC. Therefore, the Review Board overturns the decisions of the building official and County USBC board that no violations exist and finds that the installation of the windows is in violation of §§ 608 and 703 of the USBC.

Whether USBC violations are present relative to the porch rafters.

The evidence clearly indicated that the porch rafters were notched too deeply and inadequately fastened. Therefore, the Review Board overturns the decisions of the building official and County USBC board that no violations exist and finds that the installation of the porch rafters is in violation of § 802 of the USBC.

¹ Dixon's house was constructed under the 1996 edition of the USBC, effective on April 15, 1997, and the nationally recognized model code used for residential construction under that edition of the USBC was the 1995 edition of the CABO One- and Two-Family Dwelling Code; therefore, all USBC citations in this order are from that model code.

Whether the building official's citation of improper sealing and installation of pipe penetrations through the foundation walls was adequate.

The building official cited §§ 2806.1.4 and 3103.5, which clearly require a sleeve for gas piping and a foundation arch or sleeve for plumbing piping where such pipes penetrate a foundation wall. The Review Board finds the citations to be proper; therefore, Dixon's appeal concerning this issue is dismissed.

Whether USBC violations are present relative to piping and other penetrations through the interior walls, floors and ceilings.

The Review Board finds that Dixon relies upon a provision from the BOCA National Plumbing Code in his assertion that USBC violations exist. The provisions in question apply only to commercial construction and are intended to be protection against rodent intrusion and migration through a building using the tradition escutcheon plates where piping penetrations are encountered. No such comparable provision exists in the USBC provisions for residential construction as typically such penetrations are in kitchen and bathroom cabinets and other concealed areas; therefore, Dixon's appeal concerning this issue is dismissed.

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 County USBC board to be, and hereby

are, overturned as outlined in the "Finding of the Review Board" section of this order and all other issues raised by Dixon to be, and hereby are, dismissed.

/s/*
Chairman, State Technical Review Board

June 19, 2009
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.**