

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Fairfax County Department of Health  
Appeal No. 04-2

Decided: April 16, 2004

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

In correspondence during the time period from July to November of 2003, Trammell Crow Residential ("Trammell Crow"), a company specializing in residential multi-family housing, was informed by the Fairfax County Department of Health ("Health Department") that the use of concrete paving bricks ("pavers") to form the decks adjacent to swimming pools at projects being constructed by Trammell Crow in the County did not comply with the Fairfax County Pool Code.

In December of 2003, Trammell Crow filed an appeal with the Fairfax County Board of Building Code Appeals ("County USBC board") seeking to have the Health Department's decision overturned and the use of the pavers approved.

The Fairfax County Attorney's Office, representing the Health Department, submitted a brief to the County USBC board in letter form questioning whether the County USBC board had jurisdiction of the matter as the decision in question was made under the Fairfax County Water Recreation Facilities Ordinance ("County's swimming pool regulations"), which are part of the Fairfax County Code.

The County USBC board met in February of 2004 and decided that it did have jurisdiction to hear the appeal. The appeal was heard on its merits at the same meeting and the County USBC

board ruled to overturn the decision of the Health Department and substituted a decision of its own prescribing criteria for the approval of the use of pavers for the swimming pool decks.

The Health Department appealed the County USBC board's decision to the Review Board seeking reversal on jurisdictional grounds.

A preliminary hearing before the Review Board was scheduled by Review Board staff to decide whether the County USBC board acted outside of its jurisdiction in hearing Trammell Crow's appeal. The parties were given the opportunity to submit written arguments prior to the preliminary hearing and the parties were in attendance and made oral arguments at the preliminary hearing.

### III. FINDINGS OF THE REVIEW BOARD

This case concerns questions of jurisdiction and proper venue. Trammell Crow should have the right to challenge the decision of the Health Department concerning the use of the pavers, both as to whether the Health Department has authority to institute the requirement and as to whether the requirement is valid on its merits. The question is what venue is proper for that challenge.

The Review Board has had a number of cases where similar issues have arisen. The parties were given copies of these past

Review Board cases prior to the preliminary hearing. In Review Board Appeal Numbers 98-9, 99-1, 99-12 and 01-1, the issues in question were whether the Review Board had authority to determine that the USBC superseded a local ordinance requiring a sewer connection to a building, a zoning ordinance prohibiting two houses on one lot, a County Engineering Manual requirement for an easement and a County ordinance requirement for repairing signs, respectively. In each case, the Review Board ruled that it had no authority to rule on the validity of the local requirement or whether the local requirement was superseded by the USBC. That issue must be decided through an appropriate venue for challenging the ordinance in question, whether it be an appeal to a Board of Zoning Appeals, an appeal to the governing body of a locality or an appeal directly to the courts. What the Review Board did decide in those cases, however, is that the USBC prohibits the issuance of a building permit until compliance is achieved with the local requirement, or the local requirement has been found to be invalid by the appropriate body.

This case is no different. Trammell Crow argues that the County's swimming pool regulations are invalid because they are superseded by the USBC, which would permit the use of the pavers in question. They may be right. However, the Review Board has

no authority to rule on the validity of the County's swimming pool regulations.

The Health Department testified that it believed the proper venue for Trammell Crow's appeal was first to the Director of the Health Department under the County's swimming pool regulations and then to the Circuit Court. Section 69.1-1-15 of the County's swimming pool regulations, submitted as an exhibit by the Health Department, does provide for a hearing before the Director when a swimming pool permit or operator's certificate is denied.

In conclusion, the County USBC board incorrectly decided that it had jurisdiction to rule on whether the County's swimming pool regulations are superseded by the USBC or to hear Trammell Crow's appeal at all, since the purpose of the County USBC board is to hear appeals of decisions arising from the enforcement of the USBC only<sup>1</sup>. No such decision was appealed. Therefore, the County USBC board should have dismissed Trammell Crow's appeal as invalid.

---

<sup>1</sup>See § 36-105 of the Code of Virginia and § 106 of the USBC.

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 County USBC board to be, and hereby is, reversed and vacated and the appeal by Trammell Crow to the County USBC board is ordered to be, and hereby is, dismissed as invalid.

Michael A. Connor, Sr.  
Chairman, State Technical Review Board

June 18, 2004  
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.