STATE BUILDING CODE TECHNICAL REVIEW BOARD

MEETING
January 22, 2010

RICHMOND, VIRGINIA

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

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.

Mr. Vernon W. Hodge, Secretary, introduced Mr. W. Keith Brower, Jr., a newly appointed Board member, and welcomed him on behalf of the Department. Mr. Brower spoke briefly concerning his background. Mr. Hodge also advised Board members that Mr. Oglesby was in the hospital and staff would keep them apprised on his condition.

Roll Call

The Chairman then asked Mr. Hodge to establish attendance and the role was called with a quorum present. Mr. Hodge introduced Ms. Elizabeth Peay, Assistant Attorney General of the State Office of the Attorney General, attending on behalf of Steven Jack, the Board's legal counsel.

Approval of Minutes

Mr. Lowe moved to approve the minutes of the November 20, 2009 meeting as presented in the Review Board members' agenda package. The motion was seconded by Mr. Crigler and passed unanimously with Mr. Dawson abstaining from the vote.

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

Final Orders

Appeal of Robert Artise; Appeal No. 07-8:

After consideration, Mr. Lowe 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. Dawson abstaining from the vote.

Appeal of John and Sonia Ferraro; Appeal No. 09-8:

After consideration, Mr. Crigler 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. Dawson abstaining from the vote.

New Business

Appeal of Hampton Roads Hospitality, Inc.; Appeal No. 09-13:

A preliminary hearing convened with the Chairman serving as the presiding officer. The appeal concerned the installation of imported gypsum drywall in the construction of a Comfort Inn at 3355 South Military Highway in the City of Chesapeake. The City's Code Compliance Division determined that the drywall was in violation of the Virginia Uniform Statewide Building Code (USBC). Hampton Roads Hospitality, Inc. (HRH), the company constructing the Comfort Inn, appealed the determination to the City of Chesapeake Board of Building Code Appeals, which upheld the City's citation. HRH then further appealed to the Review Board. HRH later decided to remove the drywall and after removal was complete, the City rescinded the USBC citation. HRH still wished to appeal the citation, so Review Board staff scheduled a preliminary hearing for a determination by the Review Board of whether the appeal could be heard.

The following persons were present:

James T. Zelloe, Esq., for HRH
Leonard Brown, Esq., for the City of Chesapeake

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

New Business

Appeal of Hampton Roads Hospitality, Inc.; Appeal No. 09-13 (continued):

After testimony concluded, the Chairman closed the preliminary 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 Hampton Roads Hospitality, Inc.; Appeal No. 09-13:

After deliberation, Mr. Dawson moved to dismiss the appeal as HRH was not appealing the decision of the City of Chesapeake Board of Building Code Appeals. The drywall in question had been removed and the USBC notice rescinded. The motion was seconded by Mr. Crigler and passed with Mr. Lowe voting in opposition.

Appeal of Loudoun County USBC Department; Appeal Nos. 09-5 (809 Bluefield), 09-6 (823 Bluefield) and 09-7 (302 Norwich):

Mr. Brower informed the Chairman of his recusal from the proceedings due to his employment with Loudoun County.

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned the construction of stone veneer walls on the front of three houses in Loudoun County by Arcardia Building Company and whether enforcement action taken by the Loudoun County Building Department was appropriate and whether the matter had been fully heard and ruled upon by the Loudoun County Board of Building Code Appeals.

No persons were present to testify in the matter; however, Mr. Hodge informed the Chairman that correspondence had been received from counsel of both Loudoun County and Arcadia Building Company agreeing to stand on their written submittals in the case.

New Business

Appeal of Loudoun County USBC Department; Appeal Nos. 09-5 (809 Bluefield), 09-6 (823 Bluefield) and 09-7 (302 Norwich) (continued):

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

There being no testimony presented, 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 Loudoun County USBC Department; Appeal Nos. 09-5 (809 Bluefield), 09-6 (823 Bluefield) and 09-7 (3092 Norwich):

After deliberation, Mr. Lowe moved to remand the appeal back to the Loudoun County Board of Building Code Appeals for a definitive determination of whether to uphold, overturn or modify the Loudoun County building official's decision that USBC violations are present in the installation of the stone veneer walls on the front of the houses, irrespective of whether the County's legal counsel should have directed the building official to issue a notice of violation rather than just documenting the violations. The motion was seconded by Mr. Arnold and passed unanimously.

Appeal of Neil Mack and Melanie Fleming; Appeal No. 09-9:

A hearing convened with the Chairman serving as the presiding officer. The appeal concerned the construction of the Flemings' home at 493 Rose Ridge in Dickenson County and its proximity to a high tension power line owned by the Appalachian Power Company. The Dickenson County building official withheld the certificate of occupancy under the USBC due to part of the roof being too close to the power line. The Flemings appealed to the Dickenson County USBC board, which upheld the building official's ruling.

New Business

Appeal of Neil Mack and Melanie Fleming; Appeal No. 09-9 (continued):

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

Mack Fleming
Melanie Fleming

Also present were:

Carl E. McAfee, Esq., counsel for the Flemings
Clarence Bud Phillips, Esq., counsel for Dickenson County

The Chairman stated that testimony would be taken on a preliminary issue of whether to dismiss the Flemings' appeal due to timeliness.

After testimony concerning the preliminary issue concluded, the Chairman closed the hearing. After deliberation, Mr. Lowe moved not to dismiss the appeal as untimely as the Chairman of the Dickenson County USBC board advised the Flemings that they had 90 days to appeal rather than 30 days. The motion was seconded by Mr. Dawson and passed unanimously.

The Chairman reopened the hearing for testimony on the merits of the appeal.

The following exhibit was submitted by the Flemings, without objection, to supplement the Review Board agenda package.

Exhibit A – Rule 234 of the National Electrical Safety Code

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 Neil Mack Fleming and Melanie Fleming; Appeal No. 09-9:

After deliberation, Mr. Crigler moved to uphold the decision of the Dickenson County building official to withhold the certificate of occupancy for the Flemings' home, and the affirmation of that decision by the Dickenson County USBC board. The motion was seconded by Mr. Dawson and passed with Mr. Arnold voting in opposition.

Interpretations

An interpretation request from the City of Portsmouth was considered concerning the application of Section 913 of the USBC for in-building emergency communications equipment. After discussion, Mr. Arnold moved to issue the following interpretation:

QUESTION: When in-building emergency communication equipment is required by Section 913, is the building owner required to provide cabling and pathways and all necessary infrastructure to meet the acceptance test in Section 913.3?

ANSWER: Yes.

The motion was seconded by Ms. O'Bannon and passed with Mr. Dawson voting in opposition. The interpretation will be designated as Interpretation No. 5/2006.

Secretary's Report

Mr. Hodge discussed two proposals for the 2009 building and fire codes. The first proposal, to require a notice of violation under the Virginia Statewide Fire Prevention Code (SFPC) to designate whether the action was pursuant to a local fire prevention regulation, was discussed at a prior Review Board meeting and it was agreed to have the proposal considered by the workgroups involved in the code change process. Mr. Hodge advised the Review Board members that the proposal was considered at a recent workgroup meeting and there was no consensus on whether the proposal should move forward. One issued raised was that many localities consider all violations to be of their local fire codes due to the way the local codes are adopted. After discussion, it was agreed that the proposal would be dropped as the issue was more legislative in nature.

Secretary's Report (continued)

The second proposal discussion was from John Catlett, building official for the City of Alexandria. The proposal would require the Review Board to hear appeals within 90 days of the receipt of an application, unless the parties agreed to a continuance. Mr. Hodge advised the Review Board to hear appeals within 90 days of receipt of an application, unless the parties agreed to a continuance. Mr. Hodge advised the Review Board members that Mr. Catlett had been informed that the proceedings of the Review Board are governed by state law, not the USBC, therefore the proposal could not be considered by the Board of Housing and Community Development. It was further noted that Mr. Catlett indicated that he would not seek a legislative remedy if the Review Board members agreed for staff to make every effort to process appeals within 90 days. After discussion, it was agreed to have the minutes reflect that 90 days would be an acceptable time frame for processing appeals.

Adjournment

There being no further business, the meeting was adjourned by motion of Mr. Lowe at approximately 3:00 pm.

Approved: April 16, 2010

/S/
Chairman, State Building Code Technical Review Board

/S/
Secretary, State Building Code Technical Review Board