

VIRGINIA:

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BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of James Lapinski  
Appeal No. 00-2

Decided: May 19, 2000

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 and § 103.1 of the USBC. 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 and § 121.1 of the USBC. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia.

## II. CASE HISTORY

In October 1999, in response to a complaint by tenants, City of Virginia Beach USBC inspectors (the "code official") inspected a rental house owned by Mr. Lapinski at 2445 Sandpiper Drive. An inspection report was written and a USBC notice of violation issued. The violations noted were disrepair of several windows, some loose sheathing, a loose toilet, a water leak at a chimney vent, some exposed electrical wires and peeling paint on and difficult operation of a door.

After a follow-up inspection by the code official, a USBC condemnation order was issued due to the water leak at the furnace chimney vent. A condemnation order is an order that prohibits occupancy of a building.

Lapinski filed an appeal to the City of Virginia Beach Board of Building Code Appeals (the "City USBC appeals board") by brief faxed to the code official on November 23, 1999. The code official responded by letter on the same day stating a report had been received from an oil company concerning the furnace and that the condemnation order was rescinded. Lapinski faxed a response to the code official indicating he still wished to appeal.

The code official re-inspected Lapinski's house on December 6, 1999 and informed Lapinski by letter dated December 7, 1999 that the USBC violations had all been corrected.

At Lapinski's insistence, the City USBC appeals board heard Lapinski's appeal on December 20, 1999 and ruled to dismiss the appeal as moot since the USBC violations had been corrected and the condemnation order rescinded.

Lapinski then further appealed to the Review Board.

### III. PROCEEDINGS

Review Board staff conducted an informal fact-finding conference after receiving preliminary documents from the parties. The conference was attended by Lapinski, the code official and the City's legal counsel. The code official raised the issue of whether Lapinski's appeal was moot as decided by the City USBC appeals board. Lapinski requested the Review Board to rule on the merits of the USBC decisions of the code official, from a procedural and technical standpoint, asking for an invalidation and reversal of the issuance of the USBC notice of violation and condemnation order.

The parties were given a time period to submit additional documents for the record and to review the staff document resulting from the conference. Lapinski submitted a seven page brief along with other documents, supplementing the facts and issues set out in the staff document. The code official agreed with the staff document and indicated they would address any issues raised by Lapinski in verbal arguments at the hearing.

The hearing before the Review Board was scheduled for May 19, 2000. A Notice of Hearing was sent to the parties by certified/return receipt mail on May 3, 2000 indicating the hearing date and a hearing time of 10:00 a.m. A copy of the record was sent to the Review Board members and to the parties by regular mail on May 4, 2000.

The Review Board met on May 19, 2000 and opened a hearing on Lapinski's appeal at approximately 10:05 a.m. after dispensing with the approval of the minutes of a prior meeting and the approval of a final order in a prior case. The code official and the City's legal counsel were present. Lapinski was not present.

After brief arguments from the City's legal counsel, the hearing was closed and the Review Board entered deliberations. The Review Board then ruled to dismiss the appeal.

At approximately 10:15 a.m. Lapinski entered the meeting. The code official and the City's legal counsel were no longer present. Lapinski was informed the appeal had been heard and dismissed. At that time Lapinski proceeded to present arguments concerning his case to the Review Board. The Chairman of the Review Board re-opened the hearing to permit Lapinski to note his objection to the Review Board's decision for the record and to enter into the record pages four, five and six of his previously submitted seven page brief. Those pages had been omitted from the copy of the record sent to the Review Board and

outlined Lapinski's arguments concerning the technical aspects of the cited violations. The omitted pages did not address the issue of whether Lapinski's appeal was moot.

Lapinski then left the meeting and returned shortly submitting a handwritten notice of appeal of the Review Board's decision to dismiss the appeal.

#### IV. FINDINGS OF THE REVIEW BOARD

The controlling provision of the USBC concerning the validity of appeals is § 121.1 which states in pertinent part, "Appeals from the local building department concerning application of this code covering the manner of construction or materials to be used in the erection, alteration or repair of a structure shall first lie to the local board of building code appeals."

The Review Board has consistently ruled that where differing or multiple applications of the code concerning the same subject matter have been made by a code official, the latest or most current application of the USBC is considered to be the one in force and effect and is therefore the only decision subject to appeal. (See Review Board Appeal Nos. 98-8 and 99-1, *Battlefield Homes v. Hanover County*, where an appeal of a code official's refusal to issue a certificate of occupancy was ruled

moot due to the code official's subsequent decision to revoke the building permit for the same project.)<sup>1</sup>

Likewise, in this case, the condemnation order and notice of violation issued by the code official and appealed by Lapinski are no longer in effect due to the subsequent decision of the code official to rescind the condemnation order and to acknowledge the correction of the cited violations.

Accordingly, there is no appeal right for decisions no longer in effect.

#### V. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders this appeal to be, and hereby is, dismissed as moot.

The appeal is denied.

  
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Chairman, State Technical Review Board

  
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Date Entered

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<sup>1</sup>The Review Board acknowledges in one case (Appeal No. 99-10, B & H Electric v. Prince William County) an appeal of the technical merits of a corrected violation was heard. However, that appeal was heard by mutual consent of the appealing party and the code official and therefore does not contradict established precedent.

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 State Building Code Technical Review Board. In the event that this decision is served on you by mail, three (3) days are added to that period.