

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of David Cover (Cover's Chimney Service)  
Appeal No. 08-11

Hearing Date: June 19, 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

David Cover ("Cover"), a licensed contractor with a company specializing in chimney construction, appeals the citation of a USBC violation by the City of Manassas building official ("building official") for a chimney reconstruction project at 8587 Sherman Lane.

In early August of 2008, Cover obtained a USBC permit to rebuild the chimney of a house owned by Curtiss and Judith Pearson (the "Pearsons"). The building official inspected the project on August 27, 2008 and noted several USBC violations.

Cover appealed the citations to the City of Manassas Board of Building Code Appeals ("City USBC board"), which overturned one citation and upheld a second citation, which was for not using refractory mortar for the flue liner installation.

Cover then appealed the City USBC board's upholding of the citation for not using refractory mortar to the Review Board.

## III. FINDINGS OF THE REVIEW BOARD

The USBC building permit for the project was issued in August of 2008 making the project subject to the 2006 edition of the USBC. If the project was for a new chimney, then the provisions of the 2006 edition of the International Residential Code ("IRC"), a nationally recognized model building code

incorporated into the USBC for residential construction, would have to be followed. Section R1003.12 of the IRC would require the flue lining material to be installed using a refractory mortar. Cover used portland cement for the installation of the flue lining material instead of refractory mortar.

However, the chimney in question is not a new chimney; Cover was reconstructing an existing chimney.

The USBC address reconstruction differently than new construction. Section 103.5 states "[t]he following criteria is applicable to reconstruction ... [a]ny reconstruction ... shall not adversely affect the performance of the building or structure, or cause the building or structure to become unsafe of lower existing levels of health or safety ... [m]aterial or equipment, or both, may be replaced in the same location with material or equipment of a similar kind or capacity."

The evidence indicated that the Pearsons home was constructed before the initial edition of the USBC. Up until the 2000 edition of the USBC, there was no requirement in the USBC for the use of refractory mortar for flue lining material installation. Cover relied upon the traditional use of portland cement for the installation. There is neither an indication that its use is inconsistent with the original construction of the chimney nor and that the existing level of safety has been

