

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Robert Artise  
Appeal No. 07-8

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Hearing Date: November 20, 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

In April of 2007, City of Portsmouth USBC department personnel (the "code official") issued an order requiring a vacant house located at 1406 Centre Avenue and owned by Linda Artise to be demolished due to deterioration and the application of a City zoning regulation prohibiting the repair of a building damaged by neglect or lack of maintenance if the cost of the repairs exceed fifty percent (50%) of the assessed value of the building.

Linda Artise and a relative, Robert Artise, acting as her agent, appealed the demolition order to the City of Portsmouth Board of Building Code Appeals ("City USBC board"), which heard the appeal and ruled that the Artises would be permitted to have thirty (30) days to have a set of plans drafted by a registered architect or certified home designer and approved by the code official for the repair of the house.

Robert Artise further appealed the City USBC board's decision to the Review Board seeking less costly alternatives and extensions of time to repair the house.

In August of 2008, Review Board staff conducted an informal fact-finding conference pursuant to the Artises' appeal to the Review Board, which was attended by Robert Artise and the code official and their respective legal counsel. The issue of the

City zoning regulation prohibiting the repair of the house due to the cost of repairs exceeding fifty percent (50%) of the assessed value of the house was discussed and there was general agreement to continue the appeal to the Review Board while the Artises sought relief from the zoning regulation.

In June of 2009, the code official requested the Review Board to hear the appeal as the Artises had not taken any action to seek relief from the zoning regulation and the house had continued to deteriorate.

A hearing before the Review Board was scheduled and the parties properly notified; however, only the code official was present at the hearing. The Review Board heard the appeal in the absence of the Artises.

### III. FINDINGS OF THE REVIEW BOARD

In testimony at the hearing before the Review Board, it was evidenced that a fire had occurred in the Artises' house subsequent to the proceedings before the City USBC board damaging the exterior, interior and roof of the house. Given the extent of the deterioration of the house from the lack of maintenance over the years and the recent fire damage, the Review Board finds that the appropriate application of the Virginia Maintenance Code (Part III of the Virginia Uniform Statewide Building Code (13 Va. Admin. Code 5-63-450 et seq.))

is to require demolition of the house. Section 105.1 (13 Va. Admin. Code 5-63-490A) of the Virginia Maintenance Code states as follows:

105.1 General. This section shall apply to existing buildings or structures which are classified as unsafe or unfit for human occupancy. All conditions causing such structures to be classified as unsafe or unfit for human occupancy shall be remedied or as an alternative to correcting such conditions, the structure may be vacated and secured against public entry or razed or removed. Vacant and secured structures shall still be subject to other applicable requirements of this code. Notwithstanding the above, when the code official determines that an unsafe structure or a structure unfit for human occupancy constitutes such a hazard that it should be razed or removed, then the code official shall be permitted to order the demolition of such structures in accordance with applicable requirements of this code.

The fact that the Artises' house is partially in danger of collapse due to the fire damage and given the extent of deterioration of the structural members of the house from years of roof leakage and inadequate protection of the structural members, and given that the house is in close proximity to the adjacent sidewalks and streets and no barrier has been provided, the house clearly constitutes a hazard requiring demolition as contemplated by § 105.1 of the Virginia Maintenance Code.

#### 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 code official requiring demolition of the Artises' house to be, and hereby is, upheld.

/s/\*

Chairman, State Technical Review Board

Jan. 22, 2010

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.**