

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Charles E. Bird
Appeal No. 11-16

Hearing Date: March 16, 2012

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

Charles E. Bird ("Bird"), a resident of the Town of Pulaski, appeals a determination under the USBC, Part I, the Virginia Construction Code (VCC), by the Town building official concerning the construction of the barrier around a newly installed above-ground swimming pool.

During 2011, Bird contracted with a pool company to install an above-ground swimming pool adjacent to his home at 1975 Peppers Ferry Road. The installer obtained a VCC building permit from the Town building official and the installation was approved except for the barrier for the pool, which was to be installed by Bird.

Bird obtained a VCC permit for the installation of the barrier and a deck at the end of the pool closest to the rear of the house. The barrier for the pool was to consist of the pool wall in areas where there was no deck and a guardrail on top of the deck in the deck area.

In September of 2011, the Town building official inspected the pool barrier and deck and issued a notice of violation under the VCC for noncompliance with the provisions for barriers for swimming pools located at commercial and multi-family residential buildings. The notice indicated that the pool wall could not be used as the required barrier.

Bird appealed the citation to the Town of Pulaski Housing Board of Adjustment and Appeals (Town USBC board), which heard the appeal and ruled to uphold the citation. Bird then further appealed to the Review Board.

III. FINDINGS OF THE REVIEW BOARD

The Review Board finds that the citation issued by the Town building official is in error due to applying the International Building Code rather than the International Residential Code (IRC). The correct application of the VCC for residential swimming pools and barriers is to the IRC, Appendix G, which is referenced in Section 310.6 of the VCC by establishing a new Section R325.1 of the IRC, entitled, "Use of Appendix G for swimming pools, spas and hot tubs."

Item 1 of Section AG105.2 of Appendix G, for barriers, states in pertinent part that "[w]here the top of the pool structure is above grade, such as an above-ground pool, the barrier may be at ground level, such as the pool structure, or mounted on top of the pool structure." This provision makes it clear that the pool wall may be used as the barrier provided it complies with all other barrier requirements.

Bird's pool wall does satisfy the height requirements for a barrier and is in compliance with the additional requirements for barriers in Appendix G. In addition, the portion of the

pool connected to the deck is protected by the deck guardrail, which also complies with the barrier requirements of Appendix G.

However, the Review Board finds that the filter/pump assembly located adjacent to Bird's pool is a climbing hazard and in violation of Section AG105.4 of Appendix G. Section AG105.4, of Appendix G, states that "[b]arriers shall be located to prohibit permanent structures, equipment and similar objects from being used to climb them." The filter/pump assembly is within several feet of the pool wall and is over half the height of the wall. Therefore, it could be used to climb the wall.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decisions of the Town USBC board and the Town building official that the pool wall may not serve as the barrier to the pool to be, and hereby is, overturned. The Review Board further orders the notice issued by the Town building official to be, and hereby is, corrected to be a notice of noncompliance with Section AG105.4 of Appendix G of the IRC for the lack of a barrier around the filter/pump assembly.

/s/*

Chairman, State Technical Review Board

July 20, 2012

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.