

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Henry T. Pitts, Jr.
Appeal No. 00-17

Decided: November 17, 2000

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 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

Henry T. Pitts, Jr. ("Pitts") began constructing a single family dwelling in or around July of 1998 on his property at 35 Kings Point Way, in Hampton, where an existing house had burned. Proper permits were obtained from the City of Hampton USBC department ("code official") for the construction of the foundation only. Pitts was to supply plans and specifications to obtain a modification of the permit for the rest of the construction.

The foundation was approved by the code official in or around November of 1998. In November of 1999, the code official discovered Pitts had constructed the framing of the rest of the dwelling without proper approval. The code official then sent several notices to Pitts to obtain the modification of the permit. In May of 2000, a USBC notice of violation and stop work order were issued by the code official and then in June of 2000, the code official issued an order requiring Pitts to abate, raze or remove the structure.

Pitts appealed the June notice to the City of Hampton Building Board of Appeals ("City USBC appeals board"), which

ruled to deny Pitts' appeal. Pitts then appealed to the Review Board.

Review Board staff conducted an informal fact-finding conference in early November of 2000 and established the issue for resolution by the Review Board to be whether to overturn the June 29, 2000 demolition order issued by the code official and upheld by the City USBC appeals board. Both parties were present at the conference and the documents to constitute the record were established. The Review Board conducted a hearing on November 17, 2000 attended by Pitts and the code official.

III. FINDINGS OF THE REVIEW BOARD

The code official argues Pitts' structure should be demolished due to deterioration from the weather and because the lack of door and window enclosures creates a public and attractive nuisance. The code official cites Pitts' lack of compliance with codes and ordinances over the last 20 years with the prior house and condition of the property and his lack of response to issued orders relative to the current construction as evidence that Pitts will not abate the violations or finish the construction of the dwelling.

Pitts states he was prevented from continuing work by the code official when the stop work order was issued and that he

has financing in place and a contractor to finish the construction.

The Review Board finds first that the applicable USBC provision in determining whether Pitts' dwelling should be demolished is § 119.0 of the edition of the USBC which was in effect immediately prior to September 15, 2000.¹

Section 119.1 of the USBC states as follows:

"All structures or existing equipment which, during construction, are or hereafter become unsafe, unsanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or which involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. All unsafe structures shall be taken down and removed or made safe, as the code official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe."

The Review Board finds Pitts' dwelling to be unsafe based on the above section since it is in a state of deterioration, lacks adequate maintenance, is dangerous to the public welfare and is not secured against entry. The Review Board also finds the code official's decision to have the dwelling taken down, as opposed to being made safe, as authorized by § 119.1, to be

¹ Section 103.2 of the current USBC states in pertinent part that any structure on which construction has commenced shall remain subject to the building regulations in effect at the time of commencement of construction. Since the construction of Pitts' dwelling commenced prior to September 15, 2000 it remains subject to the previous edition of the USBC.

appropriate given Pitts' history of lack of cooperation with the code official and inability to achieve compliance with the USBC.

The Review Board further finds Pitts did not demonstrate that financial mechanisms were in place to facilitate the completion of the construction of the dwelling within a reasonable time or to otherwise make the structure safe.

Therefore, the Review Board finds the code official's decision to order demolition to be warranted.

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 and City USBC appeals board to be, and hereby is, upheld.

The appeal is denied.

Michael A. Turner, Sr.

Chairman, State Technical Review Board

12-6-00

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 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.