

No zoning approval

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Adams Outdoor Advertising
Appeal No. 01-1

Decided: July 20, 2001

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 Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia.

II. CASE HISTORY

Adams Outdoor Advertising ("Adams"), a billboard management company, appeals a decision of the City of Virginia Beach USBC officials ("code official") concerning a billboard located on property at the corner of Northampton Boulevard and Hook Lane.

In March, 2000, the code official informed Adams that the billboard was in an unsafe condition and would have to be demolished or repaired. Subsequent to correspondence between Adams and the code official, Adams filed for a USBC permit to repair the billboard. In review of the application, the code official determined additional information was needed before the permit could be approved.

After additional correspondence, in June, 2000, Adams was informed by the code official that the permit would still not be issued and, in separate correspondence, Adams was informed by the City's zoning department that the proposed repairs to the sign constituted a structural alteration, which was not permitted under the City's zoning ordinance.

Adams appealed the code official's decision to the City of Virginia Beach Board of Building Code Appeals ("City USBC board") and the zoning decision was appealed to the City of Virginia Beach Board of Zoning Appeals.

The City USBC board heard Adams' appeal and ruled to uphold the code official's decision. The City's Board of Zoning Appeals heard Adams' appeal of the zoning decision and ruled to uphold the zoning decision. Alleging undue interference by the City, Adams performed the repairs to the billboard prior to the hearings by the local boards.

Adams further appealed the City USBC board's decision to the Review Board and the Board of Zoning Appeals' decision was appealed to a circuit court.

Pursuant to Adams' appeal to the Review Board, Review Board staff conducted an informal fact-finding conference attended by both parties and their counsel. Review Board staff identified an issue for resolution by the Review Board of whether the code official was barred from issuing the USBC permit due to the zoning decision, irregardless of whether the permit should or should not otherwise be issued under the USBC. Several prior decisions of the Review Board involving similar issues were distributed to the parties for review prior to the hearing of the appeal.¹

A hearing before the Review Board was scheduled with the above issue to be heard preliminarily and if decided in the negative, to determine whether the permit should be issued. All

¹ Review Board Appeal Nos. 98-9, 99-1 and 99-12.

parties and their counsel were present at the Review Board hearing.

III. FINDINGS OF THE REVIEW BOARD

In consideration of the preliminary issue, the Review Board finds the record to clearly evidence that the changes to the billboard proposed and subsequently performed by Adams to have been determined by the City's zoning department to be in violation of the City's zoning ordinance. Adams appealed the City's zoning decision to the City's Board of Zoning Appeals, which upheld the City's zoning decision. The Board of Zoning Appeals' decision has been appealed to circuit court, but the case has not been heard. Therefore, at the current time Adams has not obtained the zoning approval required for the repair to the billboard.

Section 108.1 of the USBC² addresses when USBC permits may be issued in relation to approval of zoning and other matters, and states as follows:

"The code official shall examine or cause to be examined all applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of all pertinent laws, the code official shall reject such application in writing, stating the reasons therefor. If the code official is satisfied that the proposed work conforms to the requirements of this code and all laws and

²The edition of the USBC effective prior to September 15, 2000 is applicable in the appeal.

ordinances applicable thereto, the code official shall issue a permit therefor as soon as practicable."

The Review Board finds the code official is prohibited from issuing the USBC permit to Adams under the above language since the City's zoning officials have determined there is noncompliance with the City's zoning ordinance. Therefore, the code official's decision not to issue Adams' permit is upheld on this basis³ and no consideration of further issues in the appeal is necessary.

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 not to issue Adams' permit and the decision of the City USBC board to uphold such decision of the code official to be, and hereby are, upheld.

The appeal is denied.

Michael A. Cramer, Sr.

Chairman, State Technical Review Board

9-21-01

Date Entered

³ Review Board member Jones dissented stating the appeal should not be before the Review Board at all.

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.