

V I R G I N I A:

BEFORE THE STATE
BUILDING CODE TECHNICAL REVIEW BOARD

RE: APPEAL NO. 95-11
Appeal of Charles Sakowicz (Building Official)

Decided JAN 19 1996

STATEMENT OF THE APPEAL

Mr. Charles Sakowicz, the building official for King George County ("the building official"), brings the appeal to the State Building Code Technical Review Board ("the Review Board") seeking reversal of a decision of the King George County Board of Building Code Appeals ("the local appeals board").

The local appeals board ruling in question was rendered as a result of an appeal by Mr. Dean Atkins, the lessee of business property located at 7157 Kings Highway ("the site"). The local appeals board's ruling overturned a decision of the building official in enforcing the Uniform Statewide Building Code ("the USBC").

SUMMARY OF FACTS AND PROCEEDINGS

1. On April 6, 1995 a Notification of Violation was issued by the building official's staff to Mr. Atkins for a violation of Sections 1101.2 and 1101.2.1 of the USBC. The notice cited the lack of a handicapped ramp and parking space to serve an office trailer which had been installed at the site. A porch and steps had been constructed to access the office trailer.
2. Mr. Atkins requested an appeal to the local appeals board by letter dated April 18, 1995.
3. The local appeals board heard the appeal on May 11, 1995 and ruled that the building in question is a mobile unit and

as such is not required to fully meet the USBC accessibility requirements. The decision of the local appeals board was signed by the chairman on May 17, 1995.

4. The building official submitted an application for appeal to the Review Board on May 30, 1995 submitting copies of relevant documents including detailed minutes of the local appeals board hearing signed by the chairman.

5. A hearing was held before the Review Board on September 15, 1995 attended by the building official and Mr. Atkins. Mr. Atkins objected to the minutes of the local appeals board hearing. The Review Board directed the building official to furnish Mr. Atkins with a copy of the tape of the local appeals board hearing and for Review Board staff to hold an informal fact-finding conference to clarify the facts, issues for resolution, documents for the record and any objections noted by those involved.

6. An informal fact-finding conference was scheduled by staff of the Review Board on October 31, 1995, in King George County. The building official and Mr. Atkins attended that meeting; however, Mr. Atkins noted a problem with the copy of the audio tape of the local appeals board hearing. Another copy was reviewed and found to be complete and it was agreed that Mr. Atkins would be permitted to review the original tape and that the complete copy would be retained by the Review Board staff. Mr. Atkins agreed to submit any objections or corrections concerning the local appeals board meeting by December 10, 1995.

7. No submittal was received from Mr. Atkins by December 10, 1995. Staff of the Review Board scheduled another informal

fact-finding conference for January 2, 1996, in King George County. Mr. Atkins did not attend.

8. Review Board staff attempted to contact the owner of the site, P E R N Corporation, and spoke with a woman who sounded familiar with the situation. Staff was informed by that person that Mr. Atkins' lease ended on December 31, 1995 and was not renewed.

9. Notice was sent to P E R N Corporation at 7181 Kings Highway in King George, Virginia on January 1, 1996 and to others involved and the appeal was re-scheduled before the Review Board and heard on January 19, 1996. The building official was the sole participant.

FINDINGS OF THE REVIEW BOARD

1. The USBC regulates the construction of buildings and structures at a site. The construction of buildings manufactured off-site, such as the office trailer in question, is regulated by the Virginia Industrialized Building and Manufactured Home Safety Regulations. Site work associated with the installation of the office trailer is construction which is subject to the USBC. See Sections 100.3, 100.6 and 100.6.1 of the USBC.

2. Construction requirements for accessibility and usability of buildings and structures and portions thereof for persons with disabilities are set out in Chapter 11 of the USBC. The USBC incorporates by reference federal regulations and guidelines for the scoping and technical requirements for accessibility. See Section 1101.3; Addendum 1, of the USBC.

3. For new construction, the USBC accessibility standards require accessible parking spaces, if parking spaces are provided

for self-parking by employees or visitors, or both, in numbers determined by a table (Section 4.1.2(5) of the ADAAG standard). The USBC also requires an accessible route from accessible parking spaces to a building entrance (Section 4.1.2(1) of the ADAAG standard).

4. If new parking spaces were provided at the site in question, then Section 4.1.2(5) requires any such spaces to meet the accessibility requirements and Section 4.1.2(1) requires an accessible route to be provided from the accessible parking spaces to the building entrance.

5. Likewise, if all or a portion of an entry route is constructed at the site, Section 4.1.2(1) requires that portion constructed to be accessible in accordance with the standard.

6. Since the porch and steps constructed to gain entry to the office trailer is new construction at the site, it must comply with the USBC accessibility requirements. Section 4.3 of the standard sets requirements for accessible routes. Section 4.3.8 requires any change in level greater than 1/2 inch to be achieved through the use of a ramp, elevator or platform lift. The steps constructed at the site are in violation of Section 4.3.8.

7. The argument that the office trailer is a mobile unit and therefore not subject to the federal accessibility standards and the USBC was advanced at the local appeals board hearing and accepted by the local appeals board as the basis of their decision. The supplementary information to the final rule of 28 CFR Part 36 on page 35550 of the Friday, July 26, 1991 Federal Register states that mobile facilities, such as cruise ships,

floating restaurants or mobile health units are not subject to the new construction accessibility requirements. The Review Board finds that the office trailer is not a mobile unit within the context of the language cited in the Federal Register and that the site work associated with the placement of the office trailer is regulated under both the federal standards and the USBC.

FINAL ORDER

The appeal having been given due regard and in consideration of the "Findings of the Review Board" set out above, the Review Board orders that the decision of the local appeals board in this appeal be, and hereby is, overturned and the building official's April 6, 1995 notification of violation reinstated.

The appeal of the building official is granted.



Chairman, State Technical Review Board

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 Norman R. Crumpton, 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.