

Virginia:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD (REVIEW BOARD)

IN RE: Appeal of Bradley Pollack
Appeal No. 15-20

Hearing Date: July 15, 2016

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 regulations of the Department of Housing & Community Development. See §§ 36-108 and 36-114 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 September of 2015, the Shenandoah County Department of

Building Inspections (County building department), the county agency responsible for the enforcement of Part I of the Virginia Uniform Statewide Building Code (the Virginia Construction Code, or VCC), issued 4 building permits to Main Street Homes, LLC (Main Street Homes), a Class A licensed contractor, for the construction of 2 two-family dwellings in the Town of Edinburg¹. One building was planned for construction across the lot line between Lots 47 and 48 (200 and 202 Grafton Court, respectively) and the other across the lot line between Lots 49 and 50 (204 and 206 Grafton Court, respectively) of the Edinburg Square subdivision.

In October of 2015, Bradley Pollack (Pollack), an owner of property near the Edinburg Square subdivision, appealed the County building department's decision to issue all four building permits to Main Street Homes.

In November of 2015, the Shenandoah County Board of Building Code Appeals (local appeals board) heard Pollack's appeal and ruled to uphold the decision of the local building department.

Subsequently, Pollack further appealed to the Review Board.

Review Board staff conducted an informal fact-finding conference, by teleconference, in May of 2015, attended by Pollack, legal counsel to Main Street Homes, representatives of

¹ Shenandoah County administers and enforces the VCC for the Town of Edinburg

the County building department, and the local appeals board chairman. During the discussion, Pollack opined that the County building department erred in approving the building permits because the zoning approval, which was required prior to issuance of the permits, is illegal. The local building department explained that it had, in fact, temporarily rescinded all four building permits because of the local board of zoning appeal decision to overturn the zoning official's approval. The local building department further explained that once the local zoning board's decision was later overturned in court, it reinstated Main Street Homes' building permits. Staff informed the parties the Board cannot rule on zoning-related issues, but only on the application of the VCC, and brought up the possibility of holding a preliminary hearing for consideration for lack of jurisdiction. Pollack contended the Board has jurisdiction since the issue under appeal concerns the issuance of building permits.

Subsequently, a hearing on the appeal was heard before the Review Board with County representatives, and counsel for Main Street Homes, present. Mr. Pollack was not present for the hearing.

III. FINDINGS OF THE REVIEW BOARD

Through the documents he submitted, Pollack argued that the County building department should not have issued the building permits for the subject two-family dwellings because the local zoning department's approval of its portion of the building permit applications was illegal.

The relevant USBC provision on this matter is Section 110 (Permits) which states, in pertinent part:

"If the applications or amendments do not comply with the provisions of this code or all pertinent laws and ordinances, the permit shall not be issued and the permit applicant shall be notified in writing of the reasons for not issuing the permit. [...]"

Conversely, the Review Board finds that an application or amendments does, in fact, comply with the provisions of the code and all pertinent laws and ordinances, then the County building department (i.e. the local building official) is under an obligation to issue a building permit.

The County building department testified that although it had rescinded all four of Main Street Homes' building permits, when local zoning board overturned the zoning department's approval of the permits, the department ultimately reinstated the building permits once the local zoning board's decision was overturned by the Circuit Court.

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 Alan W. McMahan, 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.