

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Willie and Marguerite Dawes
Appeal No. 10-22

Hearing Date: April 22, 2011

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

Willie and Marguerite Dawes (Dawes), owners of a townhome located at 1 Cannonball Circle, in Hampton, appeal City of Hampton USBC department (building official) decisions that their townhome is in compliance with the USBC and that no action can be taken by the building official for violations of the USBC.

The Dawes' townhome was constructed by Pace Construction and Development Corporation (Pace), a licensed builder, in 2005 through 2007. The Dawes purchased the townhome in January of 2007.

In mid-2009, the Dawes contacted the building official complaining of water intrusion and other problems. The building official conducted an on-site inspection and issued a USBC notice of violation to Pace identifying the lack of weep holes in portions of the masonry veneer and water infiltration around the windows and doors as USBC violations.

Pace performed repair work at the Dawes' townhome on several occasions and in December of 2009 requested the building official to rescind the USBC notice. The building official issued a letter in February of 2010 which stated the cited USBC violations had been corrected.

In mid-2010, the Dawes submitted reports from a environmental company to the building official as evidence that

the there were still water infiltration problems in the townhome and by letter in August of 2010 requested the building official to conduct additional inspections and take appropriate action. The building official responded that no further action would be taken.

The Dawes filed an appeal to the City of Hampton Board of Building Code Appeals (City appeals board) in September of 2010. The City appeals board heard the appeal in November of 2010 and ruled to uphold the action of the building official.

The Dawes furthered appealed to the Review Board by application in December of 2010.

Staff of the Review Board conducted an informal fact-finding conference pursuant to the Dawes appeal in February of 2011, attended by the Dawes and the building official. The purpose of the conference was to clarify the Dawes' appeal to the Review Board. Review Board staff discussed with the parties past Review Board decisions addressing the application of the USBC to violations discovered after the discovery period for criminal prosecution and provided a copy of a past Review Board decision concerning the lack of weep holes and improper installation of masonry veneer. In addition, it was noted that the building official generally cannot order the removal of building components to determine whether USBC violations exist.

As a result of the informal fact-finding conference, the parties agreed to continue the appeal for the Dawes to determine whether further investigation or the removal of building components was necessary to document the USBC violations present at their townhome.

After further correspondence between the Dawes and the building official, the Dawes notified Review Board staff to move forward with their appeal to the Review Board.

A staff document outlining the appeal was drafted by Review Board staff and the parties were given opportunity for the submittal of additions, corrections or objections to the staff document, the submittal of additional documents for the record and the submittal of written arguments. A hearing before the Review Board was then scheduled.

III. FINDINGS OF THE REVIEW BOARD

The Exterior Grade

The Review Board finds the issue of whether the fall of the grade away from the townhome is in violation of the USBC is not properly before the Review Board, as neither the building official nor the City appeals board has clearly made a determination on this issue.

The Flashing at Window and Door Openings

The Review Board finds that sufficient evidence was submitted by the Dawes to substantiate that there is water intrusion around a number of windows and doors. It was further evidenced through the testimony and documents presented that Pace did not rework all the windows and doors. In addition, based on the installation instructions submitted for the windows, the windows did not appear to be self-flashing, yet no flashing, as required by the prescriptive provisions of the International Residential Code¹, was provided.

Given the above and based on the testimony concerning each window and door opening, the Review Board finds that the installation of all windows on the upper level of the front wall of the Dawes' townhome are in violation of the USBC and that the installation of all windows and doors in the rear wall of the Dawes' townhome are in violation of the USBC.

Further, the Review Board finds that Section 115.2.1 of the USBC is applicable in requiring the building official to issue written documentation of the violations so the Dawes have a record that the violations exist and have not been corrected.

The Weep Holes in the Masonry Veneer

¹ The 2003 edition of the International Residential Code (IRC) was applicable to the construction of the Dawes' townhome; however, the provisions of the IRC for flashing are essentially the same as the current USBC.

While Pace reconstructed the masonry veneer on a number of windows and doors, the evidence substantiated that no proper functioning weep holes were provided over the garage door and over the second story windows above the garage door and therefore the installation of the masonry veneer relative to those windows and the garage door is in violation of the USBC.

Further, the Review Board finds that Section 115.2.1 of the USBC is applicable in requiring the building official to issue written documentation of the violations so the Dawes have a record that the violations exist and have not been corrected.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the appeal concerning the grading to be, and hereby is, dismissed as improper, and the decisions of the building official and the City appeals board concerning the window and door installations and the weep hole installations in the masonry veneer to be, and hereby are, overturned as set out in the "Findings of the Review Board" section of this decision.



Chairman, State Technical Review Board

June 17, 2011
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.