

VIRGINIA:

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

IN RE: Appeal of Lee Roy Trent (Firewater Transport, LLC)
Appeal No. 12-2

Hearing Date: July 20, 2012

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 and 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

The appeal is of a decision of the State Fire Marshal's Office (SFMO) involving whether the parking of tank vehicles is in violation of the Statewide Fire Prevention Code (SFPC).

In July of 2011, the SFMO received correspondence from the owner of a residence on Scenic Drive, in Patrick County, stating

that his neighbor, at 1329 Scenic Drive, was operating a hazardous materials fuel oil delivery business with up to four tanker vehicles parked there when not in use.

After investigation, the SFMO issued an inspection notice to Lee Roy Trent (Trent), the owner of the property at 1329 Scenic Drive, informing him that the parking of tank vehicles on his property was in violation of Section 3406.6.2 of the SFPC and directing Trent to correct the violation within 30 days.

Trent's property is in a rural area of Patrick County and is approximately two acres. Trent's house is located on the property as is a shop building with large enough bays to pull tractor and trailers into the shop building. Trent operates a fuel delivery business and parks tank vehicles on the property when they are not in use.

Over the next six months or so, the SFMO visited the property from time to time noting that tanker trucks were there at times. Several additional inspection notices, essentially the same as the original, were issued during this time.

In February of 2012, subsequent to the issuance of a January inspection notice, Trent filed an appeal of the SFMO's notice to the Review Board, asking the Review Board to determine that the parking of his tanker trucks was not in violation of the SFPC.

Review Board staff conducted an informal fact-finding conference, attended by the parties and their respective legal counsel, to clarify the issues in the appeal and to set out the procedural timeframes for the submittal of additional documents and written arguments from the parties. Review Board drafted a summary of the appeal, distributed it to the parties and permitted opportunity for the submittal of objections, corrections or additions to the staff summary.¹ Subsequently, a hearing was held before the Review Board and was attended by all parties and their respective counsel.

III. FINDINGS OF THE REVIEW BOARD

The citation in the inspection notices issued by the SFMO is that Trent is in violation of Section 3406.6.2.1 of the SFPC, which is set out below:

3406.6.2.1 Parking near residential, educational and institutional occupancies and other high-risk areas. Tank vehicles shall not be left unattended at any time on residential streets, or within 500 feet (152 m) of a residential area, apartment or hotel complex, educational facility, hospital or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the fire chief, post an extreme life hazard.

The SFMO argues that the term "residential area" in Section 3406.6.2.1 means any area where houses are located. As support for that reading of the term, the SFMO states that to read the term differently would potentially leave residents unprotected

¹The State Fire Marshal's Office did submit objections to the staff summary.

against the hazards of fire or explosion, which is an express purpose of the SFPC.

The Review Board finds that argument to be erroneous as the wording in Section 3406.6.2.1 identifies only specific areas where large numbers of people are present in a building or area, such as apartment and hotel complexes, educational facilities or hospitals to be protected. Business areas, factory areas, mercantile or store areas are not included in the requirement. To read the term "residential area" to include any house ignores the use of the word "area" in the term. The word "area" signifies a relationship between houses. If the provision were meant to include all residences, then the use of the word "area" would not have been used with the word "residential" and instead the word "residences" alone would have been used.

The Review Board further finds that to attempt to apply this provision to randomly placed homes on separate lots as in most rural areas would lead to inconsistency. Where would a residential area start and stop? How far from a house would be considered part of a residential area? Attempting to apply the SFPC in this fashion would effectively prohibit the parking of tanker trucks in any rural area as any two houses, no matter how far apart, could be considered to constitute a residential area.

The Review Board finds that the term "residential area" as used in Section 3406.6.2.1, means a residential district or

residential subdivision where the arrangement of houses is controlled and the spacing of houses is bounded by streets or lots of similar size and configuration. Trent's property is not a residential area as the term is used in Section 3406.6.2.1 and therefore the parking of tanker trucks on his property is not a violation of that provision of the SFPC.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the citation issued by the SFMO finding Trent to be in violation of Section 3406.6.2.1 of the SFPC to be, and hereby is, overturned.

/s/*

Chairman, State Technical Review Board

Nov. 16, 2012

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.