

proper party

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

In RE: Appeal of Access Independence
Appeal No. 95-3

Decided FEB 17 1995

STATEMENT OF THE APPEAL

Access Independence, a disability and business technical assistance center, represented by Mr. W.E. Fuller, brings this appeal to the State Building Code Technical Review Board ("Review Board"). The appeal concerns property owned by Emmart Oil on Berryville Avenue in Winchester, Virginia.

The City of Winchester building official decided to deny a modification on December 13, 1994, under the Virginia Uniform Statewide Building Code, Volume I, New Construction Code, 1993 edition ("USBC") requested by W.H. Emmart & Son, Inc. The modification concerned access to a raised area behind the sales counter at the property listed above. The building official determined that the area with the raised platform was a work area and that § 4.1.1 (3) of the ADAAG standard which is part of the USBC requires areas used only as work areas to be designed and constructed so that individuals with disabilities can approach, enter and exit the areas.

W.H. Emmart & Son, Inc. appealed to the Winchester Building Code Board of Appeals ("local appeals board"). The local appeals board met on January 5, 1995 and overturned the decision of the building official finding that the platform complied with the USBC as installed. Mr. Fuller was present and testified at the

local appeals board meeting on behalf of Access Independence.

The Review Board conducted a hearing on February 17, 1995 to decide whether Access Independence has standing to appeal the decision of the local appeals board.

FINDINGS OF THE REVIEW BOARD

Sections 116.5 and 116.9 of the USBC identify the persons having a right to appeal to the Review Board.

Section 116.5 states in pertinent part:

"The owner of a building or structure, the owner's agent or any other person involved in the design or construction of the building or structure may appeal a decision of the building official..."

Section 116.9 states in pertinent part:

"After final determination by the [local appeals board], any person who was a party to the local appeal may appeal to the [Review Board]."

Testimony at the hearing before the Review Board established that Access Independence is not the owner, the owner's agent or any other person involved in the design or construction of the building in question.

The use of the terms, "who was a party to the local appeal," in § 116.9 is intended to include only those persons, other than the local building official, who have a right to initiate an appeal under § 116.5. Access Independence was not a party to the local appeal.

FINAL ORDER

This appeal having been given due regard and in consideration of the "Findings of the Review Board" set out above, the Review Board hereby rules that no valid appeal exists. The appeal is denied.


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.