

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of North Park Street, L.C.  
Appeal No. 98-10

Decided: July 17, 1998

DECISION OF THE REVIEW BOARD

PROCEDURAL BACKGROUND

1. North Park Street, L.C., a development firm in Fairfax County, through counsel, brings the appeal to the Review Board pursuant to the Virginia Uniform Statewide Building Code ("USBC").

2. By letter, Fairfax County USBC officials informed North Park of the revocation of their USBC building permit for Lot 7 in the North Park Subdivision.

3. North Park filed an appeal with the Fairfax County USBC appeals board. The Fairfax board heard the appeal and ruled to dismiss the appeal citing nonconformity with the USBC's time limit requirements for filing an appeal.

4. North Park then further appealed to the Review Board. The Review Board scheduled and conducted a preliminary hearing for consideration of the timeliness issue. North Park, through counsel, submitted written arguments but did not attend the hearing. Representatives of Fairfax County were present at the hearing.

## FINDINGS OF THE REVIEW BOARD

1. As evidenced by the supplemental statement submitted by North Park, the building permit in question was issued on November 17, 1997. The current, or 1996, edition of the USBC was in effect at that time. Section 121.1, governing appeals, states in pertinent part: "[a]ppeals relating to construction shall be submitted within 30 days."

2. The letter from Fairfax rescinding the building permit was dated April 9, 1998. Fairfax testified the letter was hand delivered to North Park's counsel that day. As evidenced by North Park's response letter, Fairfax's letter was in fact received by North Park's counsel on April 9, 1998.

3. As further evidenced by the record, North Park filed an appeal of the revocation of the building permit by application to the Fairfax board dated May 19, 1998; received by Fairfax on May 20, 1998. The appeal was therefore submitted at 41 days, not within 30 days.

4. North Park argues in its supplemental statement that Fairfax revoked the building permit under § 109.7 of the 1993 edition of the USBC. The 1993 edition of the USBC allowed 90 days to file an appeal. North Park further argues if the 1993 edition of the USBC is not applicable, the revocation is void ab initio; conversely, if the 1993 edition of the USBC is applicable, North Park had 90 days to appeal.

5. Fairfax's response to North Park's argument is that

under the current (1996) edition of the USBC, § 102.2 authorizes a building permit applicant to use the previous (1993) edition of the USBC for construction aspects of a building when the permit application is submitted within one year after the new (1996) edition of the USBC becomes effective. Fairfax states North Park exercised this option. Fairfax further argues administrative actions, such as appeals, are governed by the USBC in effect at such time the action occurs. Therefore the 30 day time frame for an appeal applies.

6. Fairfax admits error in citing § 109.7 of the 1993 edition of the USBC in revoking the building permit, but contends since § 108.6 of the current (1996) edition of the USBC contains identical wording and authorization, the revocation remains valid.

7. The Review Board agrees with Fairfax County. Further, an interpretation of the Review Board addresses the issue in question. Interpretation No. 4/93 states as follows:

**QUESTION #1:** In appealing a decision of the building official, are the current appeals procedures used, or, if the building or structure was constructed under a previous edition of the code, are the appeals procedures under the previous edition used; and, how does this correlate with § 100.6?

**ANSWER #1:** The edition of the USBC in effect at the time the application for appeal is made is used for appeal procedures. Technical issues upon which the appeal is based are according to the model code enforced at the time of the building permit application.

8. The Review Board finds Fairfax's revocation of the building permit on April 9, 1998 to be an authorized action under

§ 108.6 of the 1996 edition of the USBC. The fact that Fairfax cited the incorrect section number does not make the action void. Further, North Park, under § 121.1 of the 1996 edition of the USBC, had 30 days to file an appeal and failed to do so. Therefore North Park's appeal is invalid.

FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the ruling of the Fairfax County USBC appeals board to be, and hereby is, upheld.

The appeal of North Park Street, L.C. is denied.

  
\_\_\_\_\_  
Chairman, State Technical Review Board

10.18.98  
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 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.