

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Battlefield Rental Homes, Inc.
Appeal No. 98-8

Decided: October 16, 1998

DECISION OF THE REVIEW BOARD

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 and § 103.1 of the USBC. 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 and § 121.1 of the USBC.

This appeal to the Review Board is of a decision of the County of Hanover USBC enforcement department (code official) who issued notices of violation under §§ 116.0 and 118.0 of the

USBC to Battlefield Rental Homes, Inc. (Battlefield) for permitting occupancy of two houses constructed by Battlefield and located at 8364 and 8378 Emmanuel Trail without a USBC certificate of occupancy.

Battlefield appealed the notices to the County of Hanover Board of Building Code Appeals (local appeals board). The local appeals board ruled to uphold the issuance of the notices. Battlefield then appealed to the Review Board.

Subsequent to the hearing of the appeal by the local appeals board, the code official issued a certificate of occupancy for the house at 8364 Emmanuel Trail and revoked the USBC building permit for the house at 8378 Emmanuel Trail.

Review Board staff conducted an informal fact-finding conference on September 25, 1998 which was attended by representatives of Battlefield, including their counsel, and the code official. Battlefield stipulated at the conference that the appeal concerning the house at 8364 Emmanuel Trail was withdrawn since the certificate of occupancy had been issued. Review Board staff informed the parties that a preliminary hearing would be scheduled before the Review Board for a determination of whether the appeal of the USBC notice of violation concerning the house at 8378 Emmanuel Trail was moot due to the revocation of the USBC building permit for that house.

The Review Board conducted the preliminary hearing on October 16, 1998. Representatives of Battlefield and the code official were present. Battlefield requested a postponement of the preliminary hearing stating the Review Board's notice of the hearing was received with insufficient time to arrange representation by legal counsel. The Review Board ruled to proceed with the preliminary hearing after being informed by the code official and Review Board staff that Battlefield was informed of the hearing date at the informal fact-finding conference.

STATEMENT OF PERTINENT FACTS

The code official states the construction of the house at 8378 Emmanuel Trail complies with the USBC's technical standards. However, during the course of construction, the code official was informed by County zoning officials that there was a problem with approval of the house and property under the County's Zoning Ordinance.

At the time the code official became aware that the house was being occupied the zoning problem had not been resolved. The code official determined the USBC certificate of occupancy could not be issued until the zoning problem was resolved. Since the house was occupied, the code official issued the USBC notice of violation.

Subsequent to the USBC notice of violation being issued, the code official determined to revoke Battlefield's USBC permit. The code official testifies that he believes the revocation of the permit to be the appropriate application of the USBC when zoning approval has not been obtained. The code official has not stated in writing to Battlefield that the USBC notice of violation for occupancy without a certificate of occupancy has been vacated.

FINDINGS OF THE REVIEW BOARD

Section 118.1 of the USBC, relating to certificates of occupancy, states in pertinent part:

"A certificate of occupancy, indicating completion of the work for which a permit was issued, shall be obtained prior to occupancy of a structure"

Due to more recent action of the code official to revoke the building permit, unless successfully challenged through appeal¹, no permit now exists for constructing the house. Under § 118.1, no certificate of occupancy is needed or required in the absence of a permit. Therefore, there is no violation present of § 118.1. Since the code official used § 118.1 as the basis for the notice of violation, the notice is now without basis and invalid.

¹ Testimony of the code official indicates an appeal of the revocation has already been filed by Battlefield.

The Review Board notes its decision to invalidate the notice of violation for occupancy of the house without a certificate of occupancy is not to be construed as a decision that the house at 8378 Emmanuel Trail is in compliance with the USBC. The Review Board recognizes that the revocation of the existing USBC permit by the code official withdraws all approvals issued under the permit and that any construction must comply with the regulatory process set out in the USBC prior to being determined to be in compliance with the USBC.

FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the USBC notice of violation issued to Battlefield to be, and hereby is, moot due to the revocation of the building permit.

The appeal is dismissed without prejudice.

Michael A. Conner, Sr.
Vice-Chairman, State Technical Review Board

11-20-98
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.