

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Battlefield Rental Homes, Inc.  
Appeal No. 99-1

Decided: October 15, 1999

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 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. The Review Board's proceedings are governed by the Virginia Administrative Process

Act. See Article 2 (§ 36-108 et. seq.) of Title 36 of the Code of Virginia.

## II. CASE HISTORY

In February 1996, Battlefield Rental Homes, Inc. (Battlefield) obtained a building permit from the Hanover County USBC enforcement department (code official) to construct a new house on property owned by Battlefield. An existing rental house was also on the property.

In July 1996, Battlefield was notified by letter from a County zoning official that having two houses on the same lot was a violation of the County's zoning ordinance. The letter indicated the property could be brought into compliance with the zoning ordinance by creating a separate lot for each house, each meeting appropriate size, width and depth requirements, and by providing a 20 foot wide access. Battlefield was unable to satisfy the County's requirements for access and zoning approval was withheld.

In January 1998, the code official issued a USBC notice of violation for occupying the new house without a USBC certificate of occupancy. Battlefield appealed the notice to the Hanover County USBC appeals board, which upheld the code official's ruling. Battlefield then appealed to the Review Board.

In September 1998, prior to the Review Board hearing Battlefield's appeal, the code official revoked the USBC building permit. The Review Board then conducted a preliminary hearing and dismissed the appeal as moot due to the revocation of the permit.

In October 1998, Battlefield appealed the revocation of the building permit to the County's USBC appeals board. The County board upheld the revocation. Battlefield then appealed to the Review Board.

Battlefield and the code official agreed to waive informal fact-finding proceedings and a hearing was held before the Review Board on October 15, 1999.

### III. FINDINGS OF THE REVIEW BOARD

The issue for resolution by the Review Board is whether the code official erred in revoking the USBC building permit. USBC, § 108.6 addresses the revocation of permits and states:

"The code official shall revoke a permit or approval issued under the provisions of this code in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based."

Battlefield argues it has a vested right to use the property as contemplated by the granting of the building permit and there are no misrepresentations on the building permit application.

The code official argues no vested right exists where the property does not comply with the County's zoning ordinance and

the site plan submitted with the building permit application was a misrepresentation due to only showing one house on the property.

The Review Board finds the requirements of the USBC for applying for a building permit include an accurate representation of all contemplated construction and existing construction on a site. USBC, § 107.6 states in pertinent part:

"The application for permit shall be accompanied by a site plan showing to scale the size and location of all new construction and all existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades; and it shall be drawn in accordance with an accurate boundary line survey."

The USBC clearly required Battlefield to show both the existing house and the proposed new house when applying for the permit. Battlefield acknowledges both houses were not shown on the site plan. Therefore, a misrepresentation of fact occurred and USBC, § 108.6, required the code official to revoke the building permit.

In addition, a County zoning department representative and the County's counsel testified a new USBC building permit would not be permitted to be issued due to the lack of compliance with the County's zoning ordinance. While zoning issues are not within the jurisdiction of the Review Board, the USBC, in § 108.1, requires the rejection of permit applications which do not conform to the requirements of the USBC and all pertinent laws and ordinances.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decision of the Hanover County USBC appeals board, which upheld the code official's revocation of Battlefield's building permit, to be, and hereby is, upheld.

The appeal is denied.

*Michael A. Connor Sr.*

Chairman, State Technical Review Board

*11-19-99*

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 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.