

VIRGINIA:

BEFORE THE  
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Anna R. White  
Appeal No. 04-8

Decided: November 19, 2004

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. 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. The Review Board's proceedings are governed by the Virginia Administrative Process Act. See § 36-114 of the Code of Virginia.

## II. CASE HISTORY

In May of 2004, Mrs. Anna R. White, a property owner in Warren County, obtained a USBC building permit to construct a swimming pool near her house. The swimming pool was constructed by a contractor and was approved by the Warren County USBC department ("building official"). However, Mrs. White was informed that final approval could not be obtained without constructing a barrier or fence around the pool.

Mrs. White informed the building official by letter that she believed the USBC only applied to pools on lots and that her pool was not on a lot and therefore was exempt from the requirements for a barrier.

The building official responded in writing to Mrs. White's letter addressing it as a modification request under the USBC and denying its approval.

Mrs. White appealed the disapproval to the Warren County Building Code Appeals Board ("County USBC board"), which upheld the decision of the building official. Mrs. White then further appealed to the Review Board.

## III. FINDINGS OF THE REVIEW BOARD

The statutory and regulatory provisions addressing whether swimming pools are governed by the USBC are contained in §§ 36-

97 and 36-99 of the Code of Virginia and §§ 101.2 and 202 of the USBC. Both § 36-97 of the Code of Virginia and § 202 of the USBC define a structure as "an assembly of materials forming a construction for occupancy or use including [...] swimming pools," and both § 36-99 of the Code of Virginia and § 101.2 of the USBC contain explicit language that all structures are subject to the USBC. The USBC does contain an exemption for farm structures; however, the term is narrowly defined and is not applicable to a swimming pool. Therefore, it is clear that all swimming pools are regulated under the USBC.

The language Mrs. White relies upon in asserting that her swimming pool is not subject to the USBC is contained in Appendix G of the International Residential Code (the "IRC"), a nationally recognized model code is incorporated by reference to be an enforceable part of the USBC in § 108.1. The provision states that "this appendix shall control the design and construction of swimming pools , spas and hot tubs installed in or on the lot of a one- and two-family dwelling." The IRC, in § R202, defines a lot as "[a] portion or parcel of land considered as a unit." Appendix G of the IRC also contains the requirements for fences or barriers which must be used to protect a swimming pool.

The Review Board finds that the limiting language in Appendix G of the IRC is not that a swimming pool is required to

be on a lot, but rather that the swimming pool must be on the lot of a one- and two-family dwelling. This is to distinguish between a residential swimming pool and swimming pools serving occupancies other than one- and two-family dwellings, such as an apartment complex or a commercial pool. The USBC sets out separate standards for such swimming pools in Chapter 31 of the International Building Code (the "IBC"), a nationally recognized model code for the construction of structures other than, or not associated with, one- and two-family dwellings. The IBC is also incorporated by reference to be an enforceable part of the USBC in § 108.1.

Therefore, as Mrs. White's swimming pool is located on a lot and the lot also contains her one-family dwelling, the IRC provisions are applicable to her swimming pool. In addition, the IRC provisions are consistent with the statutory and regulatory provisions which establish that swimming pools in general are subject to the USBC.

#### IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the decisions of the building official and the County USBC board, such decisions being that Mrs. White's pool is subject to the barrier requirements of the USBC, to be, and hereby are, upheld.

The appeal is denied.

/s/\*

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Chairman, State Technical Review Board

1-21-05

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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.

\*Note: The original signed final order is available from Review Board staff.