

VIRGINIA:

BEFORE THE
STATE BUILDING CODE TECHNICAL REVIEW BOARD

IN RE: Appeal of Len Beech
Appeal No. 05-6

Decided: November 18, 2005

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

Len Beech ("Beech"), the owner of a house located at 1162 Kettle Pond Lane, in Fairfax County, appeals a decision of the Fairfax County Board of Building Code Appeals ("County USBC board"), which overturned the issuance of a notice of violation by the Fairfax County USBC department (the "building official") in the construction of an addition to Beech's house by the Gallick Corporation ("Gallick"), a home remodeling company.

Gallick obtained a building permit from the building official in September of 2003 to construct an addition to Beech's house. The addition was a single story with a basement underneath.

The addition was completed and approved by the building official in February of 2004. In April of 2004, Beech notified the building official that water was leaking into the basement of the addition. The building official verified that there was a moisture intrusion problem and issued a corrective work order in November of 2004.

Gallick and Beech could not agree on a repair plan to alleviate the USBC violation. In April of 2005, the building official upgraded the corrective work order to a notice of violation.

By application in May of 2005, Gallick appealed the notice of violation to the County USBC board. The County USBC board heard Gallick's appeal and ruled to overturn the issuance of the notice of violation stating that the dispute was a warranty concern between the parties.

Beech appealed the County USBC board's decision to the Review Board. The Review Board heard Beech's appeal at its November 2005 meeting. All parties were present at the hearing.

III. FINDINGS OF THE REVIEW BOARD

Beech asks for a determination that the parging on the outside of the cinderblock foundation walls of the basement of the addition is in violation of the USBC because it is less than three eights of an inch thick.

The evidence and testimony at the hearing indicates that the only area where there is moisture intrusion through the basement wall is at the connection of the basement wall of the addition to the basement wall of the existing house on the front side of the house.

The Review Board finds that the notice of violation issued by the building official was only for that identified moisture intrusion. Therefore the issue of whether the parging on the

basement walls of the addition complies with the USBC is not properly before the Review Board.¹

The Review Board further finds that the issue of whether the County USBC board incorrectly determined that the notice of violation was issued in error because the matter was only contractual or a warranty issue is properly before the Review Board. With respect to that decision, it is clear that a USBC violation does exist for the water intrusion into the basement. Therefore, the issuance of the notice of violation by the building official was proper.

IV. FINAL ORDER

The appeal having been given due regard, and for the reasons set out herein, the Review Board orders the June 8, 2005 decision of the County USBC board to be, and hereby is, overturned and the Review Board further orders the April 15, 2005 notice of violation issued by the building official to be, and hereby is, reinstated.

The appeal is granted in part.

/s/*

Chairman, State Technical Review Board

¹ The Review Board members noted that Beech may still ask the building official for a ruling on whether the parging complies with the USBC.

2/17/06

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.**